

BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC



In the Matter of the Application of

Michael David Schwartz

For Review of Disciplinary Action Taken by

FINRA

File No. 3-17752

FINRA'S BRIEF IN OPPOSITION TO REQUEST FOR STAY

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FINRA'S BRIEF IN OPPOSITION TO REQUEST FOR STAY

I. INTRODUCTION

Applicant Michael David Schwartz has moved to stay the suspension imposed in a December 1, 2016 decision of a FINRA Hearing Officer.¹ In that decision, the Hearing Officer correctly found that Schwartz failed to pay in full a \$568,568 arbitration award against him, and in favor of Barclays Capital Inc. (“Barclays”), issued more than three years ago. Schwartz concedes that he has not paid the award in full. (Decision at 2.) After an evidentiary hearing, the Hearing Officer found that Schwartz, who had argued that he settled the award with Barclays, did not meet his burden to prove that the settlement eliminated his obligation to pay the award in full. Accordingly, the Hearing Officer suspended Schwartz’s registration with FINRA until he pays the award in full, provides sufficient documentary evidence that he and Barclays have

¹ A copy of the Hearing Officer’s decision is attached as Exhibit A. References to the Hearing Officer’s December 1, 2016 decision will be cited as “Decision.”

agreed to a complete settlement of the award, or he files a bankruptcy petition or demonstrates that the award has been discharged by a bankruptcy court. (*Id.* at 2, 6-7.)

FINRA opposes Schwartz's stay request. Schwartz has failed to pay in full the sizable arbitration award against him for more than three years and has no cognizable defense for his failure to pay. Schwartz fails to meet the high burden that is necessary to stay the effectiveness of the suspension. Indeed, Schwartz puts forth no meritorious argument in support of his request for a stay. In addition, he has not been registered with a FINRA member since May 2015—more than 18 months before he was suspended by the Decision in December 2016—which further weighs against any claim of harm from being suspended. There is no likelihood that Schwartz will prevail on the merits of his appeal, and he has failed to satisfy the high burden necessary to stay the effectiveness of the suspension. The Commission therefore should deny the request for a stay.

II. BACKGROUND

A. Schwartz's Association with Barclays

Schwartz was a general securities representative with Barclays beginning in October 2010 until May 2012, when Barclays terminated his employment for failing to meet performance expectations. (*Id.* at 2; CRD²⁰ Report at 4, attached as Exhibit B.²) After his termination from Barclays, Schwartz was registered with another FINRA member. (CRD Report at 3.) He has not been associated with a FINRA member since May 2015. (Decision at 2; CRD Report at 3.)

² FINRA requests that the Commission take official notice of information in CRD regarding Schwartz. *See Eric David Wanger*, Exchange Act Release No. 79008, 2016 SEC LEXIS 3770, at *4 n.11 (Sept. 30, 2016) (citing 17 C.F.R. § 201.323).

B. Schwartz's Failure to Pay an Arbitration Award and the Proceedings Below

Barclays filed an arbitration claim against Schwartz on July 2, 2012. (Decision at 2.)

Barclays alleged that Schwartz failed to repay a promissory note to the firm. (*Id.*) Schwartz contested Barclays's claim in a FINRA Dispute Resolution hearing. (*Id.*) On September 19, 2013, a FINRA Dispute Resolution Panel ruled against Schwartz and awarded Barclays \$568,568. (*Id.*)

FINRA, on April 21, 2016, served Schwartz with a suspension notice for failure to pay the award. (*Id.*; suspension notice attached as Exhibit C.) FINRA's notice advised Schwartz that his registration would be suspended on May 12, 2016, unless, before that date, he had demonstrated to FINRA that he met one of the four defenses set forth in FINRA Rule 9554.³ (Decision at 2; Exhibit C.) The suspension notice also advised Schwartz that he could request a hearing, which would stay the effectiveness of the suspension. (Decision at 2-3; Exhibit C.)

Schwartz requested a hearing, which occurred in September 2016, and initially asserted as a defense an inability to pay the award. (Decision at 1, 3.) He later withdrew his inability to pay defense, asserting instead that he had settled with Barclays and therefore satisfied the award. (*Id.* at 3.) In the Decision, the Hearing Officer imposed a suspension, finding that Schwartz's

³ The suspension notice provided the four enumerated defenses under FINRA Rule 9554: (1) payment of the award in full; (2) entry into a settlement agreement with the arbitration claimant and the obligations thereunder were current; (3) a timely filed action to vacate or modify the award, which has not been denied; or (4) bankruptcy proceedings. (Exhibit C.) A respondent who fails to pay an award to a FINRA member firm may also assert a bona fide inability to pay an award. *See Michael Albert DiPietro*, Exchange Act Release No. 77398, 2016 SEC LEXIS 1036, at *16 & n.21 (Mar. 17, 2016) (evaluating inability to pay defense for awards not involving customers). Three of the enumerated defenses under Rule 9554 were not available to Schwartz at the time of the hearing. Schwartz admitted that the award was not paid in full. (Decision at 2.) Schwartz failed to file an action to vacate the award. (*Id.*) Schwartz filed for bankruptcy, and the bankruptcy court dismissed his petition. (*Id.*)

asserted defense – settlement with Barclays – did not precluded the suspension under FINRA Rule 9554. (*Id.* at 4-6.)

On December 27, 2016, Schwartz filed with the Commission a motion for stay and application for review.

III. ARGUMENT

Schwartz fails to demonstrate that the Commission should stay the suspension pending resolution of his appeal. He has failed to demonstrate a likelihood of success on the merits, and he is, moreover, unable to demonstrate that he will suffer irreparable harm without a stay or that granting the stay will serve the public interest. Indeed, the public interest strongly favors precluding Schwartz from participating in the securities industry. The Commission should keep the suspension in place to “honor[]” and “enhance[] the effectiveness of the arbitration process.”

See DiPietro, 2016 SEC LEXIS 1036, at *23 (internal quotation marks omitted).

A. Schwartz Bears the Burden to Prove that the Commission Should Issue a Stay

“[T]he imposition of a stay is an extraordinary and drastic remedy,” and Schwartz, as the applicant, has the burden of establishing that a stay is appropriate. *William Timpinaro*, Exchange Act Release No. 29927, 1991 SEC LEXIS 2544, at *6 (Nov. 12, 1991); *see William Scholander*, Exchange Act Release No. 74437, 2015 SEC LEXIS 841, at *6 (Mar. 4, 2015). Schwartz has not met that burden.

To obtain a stay of the suspension, Schwartz must show (1) a strong likelihood that he will prevail on the merits; (2) that, without a stay, he will suffer irreparable harm; (3) there would not be substantial harm to other parties if a stay were granted; and (4) that the issuance of a stay would be likely to serve the public interest. *See The Dratel Group, Inc.*, Exchange Act

Release No. 72293, 2014 SEC LEXIS 1875, at *7-8 & n.6 (June 2, 2014). Under this standard, the Commission must deny Schwartz's motion to stay.

B. Schwartz Has Shown No Likelihood of Success on the Merits

Schwartz has not demonstrated that he is likely to succeed on the merits of his appeal. Indeed, Schwartz has offered no evidence or argument to support a finding that overcomes the Hearing Officer's sound determination that Schwartz failed to meet his burden to show that the settlement with Barclays satisfies the award in full.⁴

Schwartz argued below in defense of his nonpayment that he and Barclays had settled the \$568,568 award. In the Decision, however, the Hearing Officer found that the Confidential Settlement Agreement and Release ("Agreement and Release") that Schwartz proffered in support of his defense does not "explicitly say what effect, if any, it has on the Award." (Decision at 4.) Rather, the Hearing Officer found that the Agreement and Release only disposed of certain of Schwartz's assets and assigned them to Barclays or to Schwartz.⁵

⁴ The Commission should reject Schwartz's unsupported assertions that the proceedings were unfair. (Application for Review and Motion for Stay at unnumbered pages 1-5.) Schwartz received the "fair procedure" that the Securities Exchange Act of 1934 ("Exchange Act") requires here, including notice of the suspension and an opportunity to be heard. *See* 15 U.S.C. § 78o-3(b)(8), (h)(1) (requiring that self-regulatory organizations provide fair procedures). FINRA Rule 9554 provides for expedited proceedings to suspend association with a member firm for failure to comply with 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 Schwartz complied with these requirements and was properly served. (See Exhibit C.) In addition, after Schwartz requested a hearing, FINRA complied with the applicable hearing procedures under FINRA Rule 9559. Schwartz has provided no basis upon which to conclude that FINRA deviated from its procedural safeguards in this case.

⁵ These assets include restricted stock, a vehicle, and certain real property located in Michigan. (See Agreement and Release and Stipulation and Agreed Order attached as Exhibit D.)

(Decision at 4.) Further, the Hearing Officer found that Schwartz and Barclays also entered into a Stipulation and Agreed Order (“Stipulation”) on May 18, 2016, which was submitted to the Circuit Court of Cook County, Illinois. (*Id.*; Exhibit D.) The Stipulation expressly provided that Barclays was entitled to Schwartz’s full satisfaction of the award: “Subject to the terms of the settlement agreement entered on May 17, 2016, this stipulation shall not be construed as waiving any right of Barclays to full satisfaction of the final judgment in Case No. 2014 CH 15180.”

(Decision at 4; Exhibit D.) Schwartz confirmed in his testimony that the final judgment described above was a state-court confirmation of the arbitration award. (Decision at 4 & n.23.)

The Hearing Officer further found that the Agreement and Release included other provisions that indicated Barclays did not terminate its right to recover the full amount of the award as Schwartz argues. The Agreement and Release provides for Barclays’s garnishment of Schwartz’s future wages and permits Barclays’s collection of the award from Schwartz’s future income or assets “with a value in excess of \$30,000, until the full, unpaid portion of its money judgment against [Schwartz] . . . is paid in full, or the money judgment against [Schwartz] becomes vacated.” (Decision at 5; Exhibit D.) Thus, the Hearing Officer rightly concluded that the controlling documents, the Agreement and Release and Stipulation, reveal unambiguously that Barclays and Schwartz did not agree to a complete settlement. Instead, the Agreement and Release covers only certain assets, not the award in full, and permits Barclays to collect the remaining award from Schwartz. Schwartz therefore failed to meet his burden of proving a complete settlement of the award. (Decision at 2, 4-6.)

Schwartz has set forth no evidence in his motion for stay that overcomes the Hearing Officer's findings.⁶ While any final determination awaits the Commission's consideration of the merits of the issues on review, the specific grounds upon which FINRA based its decision to suspend Schwartz exist in fact. Schwartz is not likely to have the suspension overturned on appeal, and the Commission should reject Schwartz's request to stay the suspension pending its full review of this matter.

C. Schwartz Has Not Demonstrated that a Denial of the Stay Will Impose Irreparable Harm

To make the required showing of irreparable injury, Schwartz must show that complying with the Hearing Officer's order will impose injury that is "irreparable as well as certain and great." *Whitehall Wellington Invs., Inc.*, Exchange Act Release No. 43051, 2000 SEC LEXIS 1481, at *5 (July 18, 2000). "The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time, and energy . . . are not enough." *Timpinaro*, 1991 SEC LEXIS 2544, at *8; see *Meyers Assocs., L.P.*, Exchange Act Release No. 77994, 2016 SEC LEXIS 1999, at *15-16 & n.16 (June 3, 2016). In fact, Schwartz makes no cognizable argument in his motion for a stay that addresses this required element that the Commission considers when determining whether to grant a stay. Schwartz therefore fails to meet his heavy burden.

Schwartz is not currently associated with a broker-dealer and has not been registered in the securities industry since May 2015. (Decision at 2; CRD Report at 3.) Even assuming Schwartz currently was seeking to associate with a FINRA-member broker dealer, a fact that he

⁶ Schwartz's unsupportable assertions of purported misdeeds of Barclay's counsel and FINRA's Regulatory Operations staff or his [REDACTED] status provide no basis on which to stay Schwartz's suspension. (Application for Review and Motion for Stay at unnumbered pages 2-5.) The fact remains that Schwartz has failed to prove that he and Barclays settled the award in full.

has not established, and was unable to do so as result of the suspension imposed by the Decision, such “financial detriment” would not raise to the level of irreparable injury. *See Kenny Akindemowo*, Exchange Act Release No. 78352, 2016 SEC LEXIS 2522, at *6 (July 18, 2016); *see also Scott Epstein*, Administrative Proceeding File No. 3-12933, Order Denying Stay, slip op. at 4 (Mar. 20, 2008) (“[I]t does not appear that Epstein, who apparently has not been employed in the securities industry for several years, will suffer irreparable harm without a stay.”) (attached as Exhibit E). Schwartz does not specify how he will be harmed by the suspension pending the outcome of his appeal. Schwartz thus has failed to show any irreparable harm.

D. Denial of the Stay Will Avoid Potential Harm to Others and Will Serve the Public Interest

The balance of equities weighs against a stay of the suspension. Allowing Schwartz to remain eligible to associate with a FINRA member firm during the pendency of his appeal would be perilous to maintaining the integrity of FINRA’s membership and the dispute resolution processes. FINRA’s arbitration process is designed “to provide a mechanism for the speedy resolution of disputes among members, their employees, and the public.” *Herbert Garrett Frey*, 53 S.E.C. 146, 153 (1997). The Commission previously has highlighted the important public policy for requiring the prompt payment of arbitration awards. “Requiring members or associated persons to abide by arbitration awards enhances the effectiveness of the arbitration process.” *William J. Gallagher*, 56 S.E.C. 163, 171 (2003). Indeed, “[h]onoring arbitration awards is essential to the functioning of the [FINRA] arbitration system.” *Id.* Thus, allowing Schwartz to remain eligible to associate with a member firm while on appeal for failure to pay an award in full frustrates the streamlined process that arbitration is intended to employ. *See id.*

Schwartz fails to recognize the importance of complying with an arbitration award. In balancing the possibility of injury to Schwartz against the possibility of harm to the public, the necessity of protecting the public far outweighs any potential injury to Schwartz. *See id.* (explaining that inducing a respondent to pay an arbitration award through suspension of FINRA membership furthers the public interest and the protection of investors); *see also John Montelbano*, Exchange Act Release No. 45107, 2001 SEC LEXIS 2490, at *12-13 (Nov. 27, 2001). In light of the importance of paying arbitration awards, the Commission will further the public interest by denying the stay request.

IV. CONCLUSION

For the reasons discussed above, the Commission should deny Schwartz's stay request.

Respectfully submitted,


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January 4, 2017

CERTIFICATE OF SERVICE

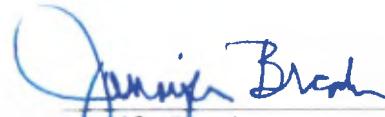
I, Jennifer Brooks, certify that on this 4th day of January 2017, I caused a copy of the foregoing Brief of FINRA in Opposition to Request for Stay, In the Matter of the Application of Michael David Schwartz, Administrative Proceeding File No. 3-17752 to be served by messenger on:

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Room 10915
Washington, DC 20549-1090

and via FedEx on:

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Service was made on the Commission by messenger and on the applicant by overnight delivery service due to the distance between FINRA's offices and the applicant.



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EXHIBIT A

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

REGULATORY OPERATIONS,

Complainant,

v.

MICHAEL DAVID SCHWARTZ
(CRD No. 4554902),

Respondent.

Expedited Proceeding

No. ARB160019

STAR No. 20160499725

Hearing Officer—RES

DECISION

December 1, 2016

Respondent is suspended from associating with any FINRA member firm in any capacity for failing to pay an arbitration award. The suspension will continue until he produces sufficient documentary evidence to FINRA showing: (1) the award has been paid in full; (2) the Respondent and the arbitration creditor have agreed to settle the matter; or (3) the Respondent has filed a petition in a United States Bankruptcy Court, or a United States Bankruptcy Court has discharged the debt representing the award.

Appearances

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

Respondent Michael Schwartz represented himself.

Decision

I. Introduction

On April 21, 2016, FINRA's Office of Dispute Resolution ("Dispute Resolution") notified Respondent Michael Schwartz ("Schwartz") that, under FINRA Rule 9554, his registration would be suspended effective May 12, 2016, because he had not paid an arbitration award (the "Award").¹ Schwartz timely filed a request for a hearing and claimed a *bona fide* inability to pay the Award, but he subsequently withdrew that defense.² In its place, he asserted the defense that he and the arbitration creditor had settled the Award. On September 1, 2016, the parties presented their cases in a hearing by telephone before the Hearing Officer.

¹ CX-5, at 1; Tr. 60. The Complainant's hearing exhibits are cited "CX-__" followed by the page number if applicable. The hearing transcript is cited "Tr." followed by the page number.

² CX-6, at 1; CX-7.

Schwartz concedes he has not paid the Award in full. Instead, he contends he settled the Award with the arbitration creditor. Complainant Department of Regulatory Operations argues he failed to meet his burden of proving settlement of the Award because the settlement agreement he proffers covers only certain assets and not the Award in full.

After the hearing and a review of the record, the Hearing Officer finds Schwartz did not meet his burden of proving a settlement of the Award. Effective immediately, he is suspended from associating with any member firm in any capacity until he produces sufficient documentary evidence to FINRA showing: (1) the Award has been paid in full; (2) he and the arbitration creditor have agreed to settle the matter; or (3) he has filed a petition in a United States Bankruptcy Court, or a United States Bankruptcy Court has discharged the debt representing the Award.

II. Legal Standards And Findings Of Fact

A. Schwartz's Background

Schwartz entered the securities industry in 2004.³ From October 2010 through October 2012, he was associated in a registered capacity with Barclays Capital Inc. ("Barclays"), the arbitration creditor.⁴ Since 2015, he has not been associated with a FINRA member firm.⁵

B. Factual and Procedural Background

On July 2, 2012, Barclays filed an arbitration claim against Schwartz with FINRA Dispute Resolution alleging he had not repaid a promissory note to Barclays.⁶ Schwartz appeared in the arbitration hearing and contested Barclays' claim. On September 19, 2013, the FINRA Arbitration Panel rendered the Award in favor of Barclays and against Schwartz in the amount of \$568,568.⁷ Schwartz did not move to vacate the Award.⁸ Although he filed for bankruptcy, the Bankruptcy Court dismissed his petition.⁹

On April 21, 2016, Dispute Resolution issued the Notice of Suspension informing Schwartz the suspension would be effective on May 12, 2016.¹⁰ The Notice stated the suspension would continue until Schwartz produced documentary evidence showing he satisfied one of the defenses to suspension.¹¹ The notice also stated he could request a hearing before the FINRA

³ CX-1, at 6.

⁴ CX-1, at 8.

⁵ CX-1, at 11.

⁶ CX-2, at 1.

⁷ CX-2, at 4. *Accord* Tr. 56-57, 102. The amount of the Award has steadily increased because of the accrual of interest and the accumulation of attorney's fees. *See* Tr. 106-07.

⁸ CX-4.

⁹ CX-9, at 1, 2, 12.

¹⁰ CX-5, at 1; Tr. 61-62, 103.

¹¹ CX-5, at 1. For the recognized defenses, see Section II.C. *infra*.

Office of Hearing Officers and a timely request would stay the effective date of the suspension.¹² Schwartz requested a hearing, stating his defense was a *bona fide* inability to pay.¹³ He later filed a motion changing his defense to assert he had settled the Award.¹⁴

C. Legal Standard

FINRA's arbitration process and applicable rules are designed "to provide a mechanism for the speedy resolution of disputes among members, their employees, and the public."¹⁵ To ensure payment of arbitration awards, FINRA promulgated rules—in particular, FINRA Rule 9554—to allow for expedited suspension proceedings against members, associated persons, and formerly associated persons who have allegedly failed to pay.¹⁶ FINRA Rule 9554(a) provides:

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 an associated person who does not pay an arbitration award:

The [C]orporation after 15 days notice in writing, may suspend or cancel the membership of any member or suspend from association with any member any person, for failure to comply with an award of arbitrators properly rendered pursuant to the [C]orporation's Rules.

The following defenses are permissible in a suspension proceeding under Rule 9554: (1) the arbitration award has been paid in full; (2) the parties have agreed to installment payments of the award, or have otherwise agreed to settle, and the respondent is not in default of the settlement; (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 United States

¹² CX-5, at 1. FINRA had jurisdiction to serve the Notice of Suspension because Schwartz was terminated from FINRA registration less than two years prior to the Notice. Tr. 76.

¹³ CX-6, at 1.

¹⁴ CX-7. See Tr. 104.

¹⁵ *Regulatory Operations v. DiPietro*, No. ARB140066, 2015 FINRA Discip. Lexis 24, at *5 (OHO June 8, 2015) (quoting *Herbert Garrett Frey*, 53 S.E.C. 146, 153 (1997); *Eric M. Diehm*, 51 S.E.C. 938, 939 (1994)). *Accord Dep't of Enforcement v. Respondent*, (ARB060031) (Apr. 16, 2007), at 4, finra.org/sites/default/files/OHODecision/p038228_0_0.pdf (same); *Dep't of Enforcement v. Respondent*, (ARB040037) (Mar. 2, 2005), at 3, finra.org/sites/default/files/OHODecision/p038234_0.pdf (same).

¹⁶ FINRA By-Laws, Art. VI, Sec. 3(b); FINRA Rule 9550 *et seq. Accord 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).

Bankruptcy Court, or a Bankruptcy Court has discharged the award.¹⁷ The respondent also may assert a *bona fide* inability to pay an award rendered in an industry dispute.¹⁸ The respondent has the burden to prove the defense.¹⁹

D. Discussion: Schwartz's Putative Settlement

In support of his defense, Schwartz proffers a Confidential Settlement Agreement and Release dated May 18, 2016 (the "Settlement Agreement").²⁰ The Settlement Agreement is in form, name, and substance a settlement agreement, signed and dated by both Schwartz and Barclays, and disposes of certain of Schwartz's assets by assigning some of them to Barclays and some of them to Schwartz. The Settlement Agreement does not explicitly say what effect, if any, it has on the Award.²¹

But at the same time they executed the Settlement Agreement, Schwartz and Barclays signed and submitted to the Circuit Court of Cook County, Illinois, a Stipulation and Agreed Order dated May 18, 2016 (the "Stipulation"). The Stipulation is dispositive in defeating Schwartz's defense that the Settlement Agreement is a settlement of the Award in full. It provided that Barclays was still entitled to full satisfaction of the Award:

Subject to the terms of the settlement agreement entered on May 17, 2016, this stipulation shall not be construed as waiving any right of Barclays to full satisfaction of the final judgment in Case No. 2014 CH 15180.²²

The final judgment of which Barclays was entitled to full satisfaction was the final judgment it had obtained in the Circuit Court of Cook County, Illinois recognizing and enforcing the Award.²³

The Settlement Agreement provides that it will be construed in accordance with the law of the State of Illinois.²⁴ Under that law, a settlement agreement is considered a contract and is

¹⁷ NASD Notice to Members 00-55, 2000 NASD LEXIS 63, at *5-6 (listing the defenses). *Accord Dep't of Enforcement v. Respondent*, (ARB060031) (Apr. 16, 2007), at 4-5, finra.org/sites/default/files/OHODecision/p038228_0_0.pdf.

¹⁸ See, e.g., *William J. Gallagher*, 56 S.E.C. 163 (2003).

¹⁹ OHO Order EXP15-02 (ARB150039) (Dec. 18, 2015), at 3-4, finra.org/sites/default/files/OHO_EXP15-02_ARB150039_0.pdf; OHO Order EXP15-03 (ARB150048) (Dec. 3, 2015), at 4, finra.org/sites/default/files/OHO_EXP15-03_ARB150048_0.pdf. *Accord Robert Tretiak*, 56 S.E.C. 209, 220, (2003) ("[i]t is well settled that a respondent bears the burden of demonstrating his or her inability to pay").

²⁰ CX-18.

²¹ See Tr. 91.

²² CX-19.

²³ CX-11, at 1, 4. *Accord* Tr. 83 (Schwartz) ("The judgment is just the confirmation of the arbitration award. They are one in the same."). See Tr. 105.

²⁴ CX-18, at 5.

interpreted as such.²⁵ “[T]he objective to be reached in construing a contract is to give effect to the intention of the parties involved,” which “must be ascertained from the language of the contract.”²⁶ If the contract permits only one interpretation, that interpretation controls.²⁷ Here, when the Settlement Agreement and the Stipulation are considered together, the only rational interpretation of the parties’ agreement is that Barclays retained its right to full satisfaction of the Award. The Settlement Agreement only dealt with certain of Schwartz’s assets which Barclays had located in a supplementary proceeding brought under the auspices of the Circuit Court case enforcing the Award. Barclays settled only with respect to those assets, not with respect to the Award as a whole. In the Stipulation, the parties made clear that the Settlement Agreement did not waive Barclays’ right to full satisfaction.²⁸

Provisions in the Settlement Agreement indicate it did not terminate Barclays’ right to recover future amounts from Schwartz under the Award. Paragraph 6 of the Settlement Agreement provides that “[n]othing in this agreement shall prohibit Barclays from perfecting a lawful garnishment of any ... future wages.”²⁹ Under the heading “Non-waiver,” Paragraph 7 provides that Barclays can collect the Award from Schwartz’s future income or assets with a value in excess of \$30,000:

Non-waiver. Judgment Debtor and Barclays agree that nothing in the foregoing shall be understood or construed as a waiver, release or discharge of Barclays’ right to lawfully collect from Debtor’s future income and/or assets he may acquire with a value in excess of \$30,000, until the full, unpaid portion of its money judgment against Judgment Debtor ... is paid in full, or the money judgment against Judgment Debtor becomes vacated.³⁰

It is common for a judgment creditor and a judgment debtor to reach an agreement as to the debtor’s current assets without the creditor giving up its right to enforce the judgment against future assets or income. In these circumstances, the judgment remains in full force and effect. Here, the settlement documents show Barclays and Schwartz adhered to the common practice and did not agree to the aberrational result Schwartz seeks—Barclays’ supposed waiver and

²⁵ *Cushing v. Greyhound Lines, Inc.*, 2013 IL App. (1st) 103197, 991 N.E.2d 28, 92 (Ill. Ct. App. 2013); *Halsma v. Edgar*, 218 Ill App. 3d 78, 86, 578 N.E.2d 163, 161 (Ill. Ct. App. 1991).

²⁶ *In re Doyle*, 144 Ill. 2d 451, 468, 581 N.E.2d 669 (Ill. 1991).

²⁷ *Omnitrus Merging Corp. v. Illinois Tool Works, Inc.*, 256 Ill. App. 3d 31, 628 N.E.2d 1165, 1168 (Ill. Ct. App. 1993).

²⁸ A contract term is ambiguous only if “the language is reasonably or fairly susceptible to more than one construction.” *Tishman Midwest Management Corp. v. Wayne Jarvis, Ltd.*, 146 Ill. App. 3d 684, 689, 500 N.E.2d 431, 434 (Ill. Ct. App. 1986). Here, the Stipulation is not susceptible to the construction that Barclays waived its right to recover the Award in full.

²⁹ CX-18, at 3.

³⁰ CX-18, at 3-4. Part of the supplementary enforcement process consists of the issuance of “Citations” seeking the disclosure of assets owned by the judgment debtor. See Tr. 107-08. Here, one of the Whereas clauses of the Settlement Agreement expressed the parties’ intent to limit its scope to the assets located in the citations process: “Judgment-Debtor and Barclays wish to resolve, terminate and settle all disputes, claims and actions arising from the Citations ...” CX-18, at 1.

release of the entire six-figure Award for less than ten cents on the dollar. Schwartz has failed to meet his burden of proving the Settlement Agreement was a settlement of the Award in full.

III. Regulatory Operations' Motion to Dismiss

Two days before the hearing, Regulatory Operations filed a motion to dismiss Schwartz's hearing request on the ground that he had not asserted a valid defense. At the beginning of the hearing, the Hearing Officer orally denied the motion because: (1) it was untimely; (2) Schwartz had raised a factual issue as to whether the evidence supported his defense that a settlement agreement had settled the Award; and (3) there is no FINRA Rule or decision authorizing the Hearing Officer to dismiss a hearing request where the respondent has raised a factual issue regarding his defense. Notwithstanding the Hearing Officer's oral decision, Regulatory Operations requested and proceeded to present arguments in support of its motion orally, and renewed its motion at the end of the hearing, after all the evidence had been presented.

In February 2016, the National Adjudicatory Council issued the decision in *Dep't of Enforcement v. Lundgren*.³¹ In that case, respondent Lundgren filed a motion to dismiss an expedited proceeding to provide time for an investigation into "possible irregularities" by FINRA staff. The decision is dispositive in holding that motions to dismiss are not allowed in expedited proceedings:

As an initial matter, we deny the Motion for two reasons. First, the 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. ... 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.³²

Bound by the holding in *Lundgren*, the Hearing Officer finds that the FINRA Rule 9500 Series, which governs expedited proceedings, does not allow for pre-hearing dispositive motions. Regulatory Operations' motion to dismiss was correctly denied.

IV. Conclusion

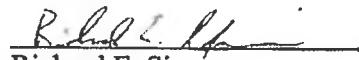
The Hearing Officer finds, and the parties do not dispute, that Schwartz has not paid the Award in full. Schwartz did not prove the defense he asserted—that he has purportedly settled the Award—on which he had the burden of proof.

³¹ No. FPI150009, 2016 FINRA Discip. LEXIS 2 (Feb. 18, 2016).

³² *Id.* at *11 (citations omitted).

Under Article VI, Section 3(b) of FINRA's By-Laws and Rule 9559(n), Schwartz is suspended from associating with any member firm in any capacity, effective immediately. The suspension shall continue until Schwartz produces sufficient documentary evidence to FINRA showing: (1) the Award has been paid in full; (2) Schwartz and Barclays have agreed to settle the Award in full; or (3) Schwartz has filed a petition in a United States Bankruptcy Court, or a United States Bankruptcy Court has discharged the debt representing the Award.

Schwartz is ordered to pay FINRA costs of \$2,206.50, which include an administrative fee of \$750 and hearing transcript costs of \$1456.50.³³ These costs are due and payable immediately on issuance of this Decision.



Richard E. Simpson
Hearing Officer

Copies to:

Michael David Schwartz (*via email and overnight delivery*)
Meredith A. MacVicar, Esq. (*via email*)
Deon McNeil Lambkin, Esq. (*via email*)
Ann-Marie Mason, Esq. (*via email*)

³³ The Hearing Officer has considered all arguments made by the parties. They are rejected or sustained to the extent they are inconsistent or in accord with the views expressed in this Decision.

EXHIBIT B

Notice

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FINRA operates the IARD system as a vendor pursuant to a contract with the Securities and Exchange Commission and undertakings with NASAA and participating state regulators.

Reportable Information: Information that is required to be reported on the current version of the uniform registration forms.

Non-Reportable Information: Information that is not currently reportable on a uniform registration form. Information typically is not reportable because it is out-of-date; it was reported in error; or some change occurred either in the disposition of the underlying event after it was reported or in the question on the form that elicited the information. Although not currently reportable, this information was once reported on a uniform form and, consequently, may have become a state record. Users of this information should recognize that filers have no obligation to update non-reportable data; accordingly, it may not reflect changes that have occurred since it was reported.

Details for Request#: 18233492
Report: Snapshot - Individual
Requested By: MAC

<u>Parameter Name</u>	<u>Value</u>
Request by CRD# or SSN:	CRD#
Individual CRD# or SSN	4554902
Include Personal Information?	Yes
Include All Registrations with Employments:	Both Current and Previous Employments
Include All Registrations for Current and/or Previous Employments with	All Regulators
Include Professional Designations?	Yes
Include Employment History?	Yes
Include Other Business?	Yes
Include Exam Information?	Yes
Include Continuing Education Information? (CRD Only)	Yes
Include Filing History? (CRD Only)	Yes
Include Current Reportable Disclosure Information?	Yes
Include Regulator Archive and Z Record Information? (CRD Only)	Yes

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Snapshot - Individual
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Request Submitted: 12/29/2016 12:33:44 PM

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Individual 4554902 - SCHWARTZ, MICHAEL DAVID

Administrative Information

Composite Information

Full Legal Name SCHWARTZ, MICHAEL DAVID

State of Residence IL

Active Employments <<No Current Active Employments found for this Individual.>>

Reportable Disclosures? Yes

Statutory Disqualification? SDRQRSRVW

Registered With Multiple Firms? No

Material Difference in Disclosure? No

Personal Information

Individual CRD# 4554902

Other Names Known By <<No Other Names found for this Individual.>>

Year of Birth 1980

Registrations with Current Employer(s)

<<No Registrations with Current Employer(s) found for this Individual.>>

Registrations with Previous Employer(s)

From 09/04/2012 To 05/24/2015 MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED(7691)

Reason for Termination Other

Termination Comment REDUCTION IN STAFF

Regulator	Registration Category	Status Date	Registration Status	Approval Date
ARCA	GS	05/26/2015	TERMED	11/15/2012
BATS-YX	GS	05/26/2015	TERMED	05/16/2014
BATS-ZX	GS	05/26/2015	TERMED	05/16/2014
BOX	GS	05/26/2015	TERMED	11/15/2012
BX	GS	05/26/2015	TERMED	11/15/2012
C2	GS	05/26/2015	TERMED	05/16/2014
CBOE	GS	05/26/2015	TERMED	11/15/2012
CHX	GS	05/26/2015	TERMED	05/16/2014
EDGA	GS	05/26/2015	TERMED	05/16/2014
EDGX	GS	05/26/2015	TERMED	05/16/2014
FINRA	GS	05/26/2015	TERMED	11/15/2012
IA	AG	05/26/2015	TERMED	11/15/2012
IL	AG	05/26/2015	TERMED	11/15/2012
IL	RA	05/26/2015	TERMED	11/15/2012
IN	AG	05/26/2015	TERMED	11/15/2012
ISE	GS	05/26/2015	TERMED	11/15/2012
ISE	GS	05/26/2015	TERMED	05/16/2014
GEMINI				
MI	AG	05/26/2015	TERMED	11/15/2012
MIAX	GS	05/26/2015	TERMED	05/16/2014

CRD® or IARD(TM) System Report -- See notice regarding CRD Data on cover page.

Individual 4554902 - SCHWARTZ, MICHAEL DAVID

Administrative Information

Registrations with Previous Employer(s)

Regulator OPTIONS	Registration Category	Status Date	Registration Status	Approval Date
MN	AG	05/26/2015	TERMED	11/15/2012
NQX	GS	05/26/2015	TERMED	11/15/2012
NSX	GS	06/06/2014	T_NOUS	05/16/2014
NYSE	GS	05/26/2015	TERMED	11/15/2012
NYSE-MKT	GS	05/26/2015	TERMED	11/15/2012
OH	AG	05/26/2015	TERMED	11/16/2012
PHLX	GS	05/26/2015	TERMED	11/15/2012
WI	AG	05/26/2015	TERMED	11/15/2012

From 10/29/2010 To 05/22/2012 BARCLAYS CAPITAL INC.(19714)

Reason for Termination Other

Termination Comment DID NOT MEET PERFORMANCE EXPECTATIONS

Regulator	Registration Category	Status Date	Registration Status	Approval Date
ARCA	GS	06/11/2012	TERMED	10/29/2010
AZ	AG	06/11/2012	TERMED	10/29/2010
BATS-YX	GS	06/11/2012	TERMED	10/29/2010
BATS-ZX	GS	06/11/2012	TERMED	10/29/2010
BOX	GS	06/11/2012	TERMED	05/07/2012
BX	GS	06/11/2012	TERMED	10/29/2010
C2	GS	06/11/2012	TERMED	07/15/2011
CA	AG	06/11/2012	TERMED	10/29/2010
CA	RA	06/11/2012	TERMED	10/29/2010
CBOE	GS	06/11/2012	TERMED	10/29/2010
CHX	GS	06/11/2012	TERMED	10/29/2010
CO	AG	06/11/2012	TERMED	11/04/2011
CT	AG	06/11/2012	TERMED	05/02/2011
EDGA	GS	06/11/2012	TERMED	10/29/2010
EDGX	GS	06/11/2012	TERMED	10/29/2010
FINRA	GS	06/11/2012	TERMED	10/29/2010
FL	AG	06/11/2012	TERMED	10/29/2010
GA	AG	06/11/2012	TERMED	05/02/2011
IA	AG	06/11/2012	TERMED	10/29/2010
IL	AG	06/11/2012	TERMED	10/29/2010
IL	RA	06/11/2012	TERMED	10/29/2010
IN	AG	06/11/2012	TERMED	10/29/2010
ISE	GS	06/11/2012	TERMED	10/29/2010
MI	AG	06/11/2012	TERMED	10/29/2010
MN	AG	06/11/2012	TERMED	10/29/2010
MO	AG	06/11/2012	TERMED	10/29/2010
NC	AG	06/11/2012	TERMED	10/29/2010
NC	RA	06/11/2012	TERMED	10/29/2010
NE	AG	06/11/2012	TERMED	10/29/2010
NJ	AG	06/11/2012	TERMED	10/29/2010

Individual 4554902 - SCHWARTZ, MICHAEL DAVID

Administrative Information

Registrations with Previous Employer(s)

Regulator	Registration Category	Status Date	Registration Status	Approval Date
NJ	RA	06/11/2012	TERMED	10/29/2010
NQX	GS	06/11/2012	TERMED	10/29/2010
NSX	GS	06/11/2012	TERMED	10/29/2010
NY	AG	06/11/2012	TERMED	10/29/2010
NYSE	GS	06/11/2012	TERMED	10/29/2010
NYSE-MKT	GS	06/11/2012	TERMED	10/29/2010
OH	AG	06/11/2012	TERMED	10/29/2010
OH	RA	06/11/2012	TERMED	10/29/2010
PA	AG	06/11/2012	TERMED	05/02/2011
PHLX	GS	06/11/2012	TERMED	10/29/2010
TX	AG	06/11/2012	TERMED	10/29/2010
TX	RA	06/11/2012	TERMED	10/29/2010
WI	AG	06/11/2012	TERMED	10/29/2010

From 11/17/2008 To 10/28/2010 J.P. MORGAN SECURITIES LLC(79)

Reason for Termination Voluntary

Termination Comment

Regulator	Registration Category	Status Date	Registration Status	Approval Date
AK	AG	11/09/2010	TERMED	01/26/2009
AL	AG	11/09/2010	TERMED	01/26/2009
AR	AG	11/09/2010	TERMED	01/26/2009
ARCA	GS	11/09/2010	TERMED	01/23/2009
AZ	AG	11/09/2010	TERMED	01/26/2009
BX	GS	11/09/2010	TERMED	09/30/2009
CA	AG	11/09/2010	TERMED	01/26/2009
CBOE	GS	11/09/2010	TERMED	01/23/2009
CO	AG	11/09/2010	TERMED	01/26/2009
CT	AG	11/09/2010	TERMED	01/26/2009
DC	AG	11/09/2010	TERMED	01/26/2009
DE	AG	11/09/2010	TERMED	01/26/2009
FINRA	GS	11/09/2010	TERMED	01/23/2009
FL	AG	11/09/2010	TERMED	01/26/2009
GA	AG	11/09/2010	TERMED	01/26/2009
HI	AG	11/09/2010	TERMED	01/26/2009
IA	AG	11/09/2010	TERMED	01/26/2009
ID	AG	11/09/2010	TERMED	01/26/2009
IL	AG	11/09/2010	TERMED	01/26/2009
IN	AG	11/09/2010	TERMED	01/26/2009
ISE	GS	11/09/2010	TERMED	01/23/2009
KS	AG	11/09/2010	TERMED	01/26/2009
KY	AG	11/09/2010	TERMED	01/26/2009
LA	AG	11/09/2010	TERMED	01/26/2009
MA	AG	11/09/2010	TERMED	01/26/2009
MD	AG	11/09/2010	TERMED	01/26/2009

Individual 4554902 - SCHWARTZ, MICHAEL DAVID

Administrative Information

Registrations with Previous Employer(s)

Regulator	Registration Category	Status Date	Registration Status	Approval Date
ME	AG	11/09/2010	TERMED	01/26/2009
MI	AG	11/09/2010	TERMED	01/26/2009
MN	AG	11/09/2010	TERMED	01/26/2009
MO	AG	11/09/2010	TERMED	01/26/2009
MS	AG	11/09/2010	TERMED	01/26/2009
MT	AG	11/09/2010	TERMED	01/26/2009
NC	AG	11/09/2010	TERMED	01/26/2009
ND	AG	11/09/2010	TERMED	01/26/2009
NE	AG	11/09/2010	TERMED	01/26/2009
NH	AG	11/09/2010	TERMED	01/26/2009
NJ	AG	11/09/2010	TERMED	01/26/2009
NM	AG	11/09/2010	TERMED	01/26/2009
NQX	GS	11/09/2010	TERMED	01/23/2009
NV	AG	11/09/2010	TERMED	01/26/2009
NY	AG	11/09/2010	TERMED	01/26/2009
NYSE	GS	11/09/2010	TERMED	01/23/2009
NYSE-MKT	GS	11/09/2010	TERMED	01/23/2009
OH	AG	11/09/2010	TERMED	01/27/2009
OK	AG	11/09/2010	TERMED	01/26/2009
OR	AG	11/09/2010	TERMED	01/26/2009
PA	AG	11/09/2010	TERMED	01/26/2009
PHLX	GS	11/09/2010	TERMED	01/23/2009
PR	AG	11/09/2010	TERMED	04/20/2010
RI	AG	11/09/2010	TERMED	01/26/2009
SC	AG	11/09/2010	TERMED	01/26/2009
SD	AG	11/09/2010	TERMED	01/26/2009
TN	AG	11/09/2010	TERMED	01/26/2009
TX	AG	11/09/2010	TERMED	01/26/2009
UT	AG	11/09/2010	TERMED	01/26/2009
VA	AG	11/09/2010	TERMED	01/26/2009
VI	AG	11/09/2010	TERMED	04/20/2010
VT	AG	11/09/2010	TERMED	01/26/2009
WA	AG	11/09/2010	TERMED	01/26/2009
WI	AG	11/09/2010	TERMED	01/26/2009
WV	AG	11/09/2010	TERMED	01/26/2009
WY	AG	11/09/2010	TERMED	01/26/2009

From 09/16/2004 To 10/08/2004 CITICORP INVESTMENT SERVICES(23988)

Reason for Termination Voluntary

Termination Comment

Regulator	Registration Category	Status Date	Registration Status	Approval Date
FINRA	GS	10/14/2004	TERMED	09/17/2004
IL	AG	10/14/2004	TERMED	09/17/2004

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Individual 4554902 - SCHWARTZ, MICHAEL DAVID

Administrative Information

Registrations with Previous Employer(s)

From 08/11/2003 To 09/14/2004 BANC ONE SECURITIES CORPORATION(16999)

Reason for Termination Voluntary

Termination Comment

Regulator	Registration Category	Status Date	Registration Status	Approval Date
FINRA	GS	10/12/2004	TERMED	08/26/2003
IL	AG	10/12/2004	TERMED	08/26/2003
IL	RA	10/12/2004	TERMED	08/26/2003

From 06/24/2002 To 08/18/2003 IDS LIFE INSURANCE COMPANY(6321)

Reason for Termination Voluntary

Termination Comment

Regulator	Registration Category	Status Date	Registration Status	Approval Date
FINRA	GS	08/19/2003	TERMED	07/02/2002

From 06/24/2002 To 08/18/2003 AMERICAN EXPRESS FINANCIAL ADVISORS INC.(6363)

Reason for Termination Voluntary

Termination Comment

Regulator	Registration Category	Status Date	Registration Status	Approval Date
FINRA	GS	08/19/2003	TERMED	07/02/2002
IN	AG	08/19/2003	TERMED	07/15/2002
IN	RA	08/19/2003	TERMED	07/15/2002
MI	AG	08/19/2003	TERMED	07/15/2002

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Individual 4554902 - SCHWARTZ, MICHAEL DAVID

Administrative Information

Professional Designations

<<No Professional Designations found for this Individual.>>

Employment History

From 10/2012	To Present	Name MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED
		Location CHICAGO, IL, United States
		Position SVP, WEALTH MANAGEMENT LIAISON
		Investment Related Yes
From 10/2010	To 10/2012	Name BARCLAYS CAPITAL INC.
		Location CHICAGO, IL, United States
		Position INVESTMENT REPRESENTATIVE
		Investment Related Yes
From 11/2008	To 10/2010	Name J.P.MORGAN SECURITIES INC
		Location CHICAGO, IL, United States
		Position CLIENT ADVISOR
		Investment Related Yes
From 10/2008	To 11/2008	Name JPMORGAN CHASE BANK
		Location CHICAGO, IL, United States
		Position CLIENT ADVISOR
		Investment Related Yes
From 07/2005	To 10/2008	Name NATIONAL CITY BANK
		Location CHICAGO, IL, United States
		Position VICE PRESIDENT - CLIENT ADVISOR
		Investment Related Yes
From 10/2004	To 07/2005	Name JPMORGAN CHASE BANK
		Location CHICAGO, IL, United States
		Position SMALL BUSINESS RELATIONSHIP MANAGER
		Investment Related No
From 09/2004	To 10/2004	Name CITIBANK
		Location CHICAGO, IL, United States
		Position BUSINESS BANKING OFFICER
		Investment Related No
From 09/2004	To 10/2004	Name CITICORP INVESTMENT SERVICES
		Location CHICAGO, IL, United States

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Individual 4554902 - SCHWARTZ, MICHAEL DAVID

Administrative Information

Employment History

			Position	BUSINESS BANKING OFFICER
			Investment Related	Yes
From	08/2003	To	09/2004	Name BANC ONE SECURITIES CORPORATION
			Location	CHICAGO, IL, United States
			Position	LICENSED BANKER
			Investment Related	Yes
From	08/2003	To	09/2004	Name BANK ONE CORPORATION
			Location	CHICAGO, IL, United States
			Position	RELATIONSHIP BANKER
			Investment Related	Yes
From	06/2002	To	08/2003	Name AMERICAN EXPRESS FINANCIAL ADVISORS
			Location	MISHAWAKA, IN, United States
			Position	INDEPENDENT CONTRACTOR OR EMPLOYEE FINANCIAL ADVISOR
			Investment Related	Yes
From	06/2002	To	08/2003	Name IDS LIFE INSURANCE COMPANY
			Location	MISHAWAKA, IN, United States
			Position	INDEPENDENT CONTRACTOR OR EMPLOYEE FINANCIAL ADVISOR
			Investment Related	Yes
From	09/2001	To	05/2002	Name ABERCOMBIE AND FITCH
			Location	MISHAWAKA, IN, United States
			Position	ASSISTANT MANAGER
			Investment Related	No
From	02/2001	To	09/2001	Name LIFE IN BALANCE
			Location	NILES, MI, United States
			Position	BUSINESS MANAGER
			Investment Related	No
From	08/1998	To	06/2001	Name ANDREWS UNIVERISTY
			Location	BERRIEN SPRINGS, MI, United States
			Position	STUDENT
			Investment Related	No
From	02/2000	To	05/2001	Name ANDREWS UNIVERISTY/HR
			Location	BERRIEN SPRINGS, MI, United States

Individual 4554902 - SCHWARTZ, MICHAEL DAVID

Administrative Information

Employment History

			Position	STUDENT ASST
			Investment Related	No
From	11/1999	To	02/2000	Name UNEMPLOYED
			Location	BERRIEN SPRINGS, MI, United States
			Position	UNEMPLOYED
			Investment Related	No
From	08/1998	To	11/1999	Name ANDREWS UNIVERSITY
			Location	BERRIEN SPRINGS, MI, United States
			Position	GENERAL STUDENT EMPLOYMENT
			Investment Related	No
From	06/1998	To	08/1998	Name CAMP ANSABLE
			Location	GRAYLING, MI, United States
			Position	WATERFRONT/CAMP STAFF
			Investment Related	No
From	08/1997	To	06/1998	Name SOUTHERN ADVENTIST UNIVERSITY
			Location	COLLEGEDALE, IN, United States
			Position	STUDENT
			Investment Related	No
From	06/1997	To	08/1997	Name CAMP EMSEMBLE
			Location	GRAYLING, MI, United States
			Position	WATERFRONT/CAMP STAFF
			Investment Related	No
From	08/1994	To	06/1997	Name GREAT LAKES EDUCATIONAL ACADEMY
			Location	CEDAR LAKE, MI, United States
			Position	STUDENT
			Investment Related	No
From	06/1996	To	08/1996	Name PONDEROSA STEAK HOUSE
			Location	TRAVERSE CITY, MI, United States
			Position	HOT BUFFET
			Investment Related	No
From	08/1991	To	08/1994	Name NORTHVIEW SDA
			Location	CADILLAC, MI, United States
			Position	STUDENT

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Individual 4554902 - SCHWARTZ, MICHAEL DAVID

Administrative Information

Employment History

Investment Related No

Office of Employment History

From 09/2012 To 05/2015

Name MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED(7691)

Independent Contractor No

Office of Employment Address

CRD Branch#	Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
513495	EC-OBP01		Yes	No	06/03/2013	05/24/2015	Supervised From
	Address ONE BRYANT PARK						
	NEW YORK, NY 10036	United States	No	No	09/04/2012	05/24/2015	Located At
	Address 135 S LASALLE STREET						
	CHICAGO, IL 60603	United States					
506202	EC-PEN01		Yes	No	09/04/2012	06/03/2013	Supervised From
	Address 1100-1800 MERRILL LYNCH DRIVE						
	PENNINGTON, NJ 08534	United States					
457003	CB-CHI02		Yes	No	09/04/2012	09/04/2012	Located At
	Address 135 S LA SALLE ST						
	CHICAGO, IL 60603	United States					

From 10/2012 To 11/2012

Name MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED(7691)

Independent Contractor

Office of Employment Address

CRD Branch#	Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
			No	No	10/03/2012	11/15/2012	Located At
	Address 525 N TRYON STREET						
	CHARLOTTE, NC 28203	United States					

From 10/2010 To 05/2012

Name BARCLAYS CAPITAL INC (19714)

Independent Contractor No

Office of Employment Address

CRD Branch#	Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
381476	00580-00016		Yes	No	10/29/2010	05/22/2012	Located At
	Address 190 SOUTH LASALLE STREET, 25TH FLOOR						
	CHICAGO, IL 60603	United States					

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Individual 4554902 - SCHWARTZ, MICHAEL DAVID

Administrative Information

Office of Employment History

From 11/2008 To 10/2010

Name J.P. MORGAN SECURITIES LLC(79)

Independent Contractor No

Office of Employment Address

CRD Branch#	Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
382117	HNW-382117		Yes	No	11/17/2008	10/28/2010	Located At

Address 10 S. DEARBORN, FLOOR 8
CHICAGO, IL 60603 United States

From 09/2004 To 10/2004

Name CITICORP INVESTMENT SERVICES(23988)

Independent Contractor No

Office of Employment Address

CRD Branch#	Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
			No	No	09/16/2004	10/08/2004	Located At

Address 233 N. MICHIGAN AVENUE
CHICAGO, IL 60601 United States

From 08/2003 To 09/2004

Name BANC ONE SECURITIES CORPORATION(16999)

Independent Contractor No

Office of Employment Address

CRD Branch#	Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
			No	No	08/11/2003	09/14/2004	Located At

Address ONE BANK ONE PLAZA
CHICAGO, IL 60606 United States

From 06/2002 To 08/2003

Name AMERICAN EXPRESS FINANCIAL ADVISORS INC (6363)

Independent Contractor No

Office of Employment Address

CRD Branch#	Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
			No	No	06/24/2002	08/18/2003	Located At

Address 9046 US 31 HIGHWAY STE 6
BERRIEN SPRINGS, MI 49103 United States

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Individual 4554902 - SCHWARTZ, MICHAEL DAVID

Administrative Information

Office of Employment History

From 06/2002 To 08/2003

Name IDS LIFE INSURANCE COMPANY(6321)

Independent Contractor No

Office of Employment Address

CRD Branch#	Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
			No	No	06/24/2002	08/18/2003	Located At

Address 9046 US 31 HIGHWAY STE 6
BERRIEN SPRINGS, MI 49103 United States

Other Business

<<No Other Business found for this Individual.>>

Exam Appointments

<<No Exam Appointments found for this Individual.>>

Exam History

Exam	Enrollment ID	Exam Status	Status Date	Exam Date	Grade	Score	Window Dates
S7	24614973	Official Result	01/23/2009	01/22/2009	Passed	88	11/27/2008-03/27/2009
S7	24614972	Official Result	07/02/2002	07/01/2002	Passed	80	06/25/2002-10/23/2002
S66	24614971	Official Result	12/25/2008	12/24/2008	Passed	83	11/27/2008-03/27/2009
S66	24614970	Official Result	07/15/2002	07/12/2002	Passed	87	06/25/2002-10/23/2002

CE Regulatory Element Status

Current CE Status SATISFIED

CE Base Date 01/23/2009

CE Appointments

<<No CE Appointments found for this Individual.>>

Current CE

<<No Current CE found for this Individual.>>

Next CE

Window Dates	Enrollment ID	Requirement Type	Session
01/23/2017-05/22/2017	34221636	Anniversary	101

CE Directed Sequence History

<<No CE Directed Sequence History found for this Individual.>>

Inactive CE History Dates

<<No Inactive CE History Dates found for this Individual.>>

Previous CE Requirement Status

Requirement Type	Enrollment ID	Session	Status	Status Date	Window Dates	Result
Anniversary	33248070	101			01/23/2014-	

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Individual 4554902 - SCHWARTZ, MICHAEL DAVID

Administrative Information

Previous CE Requirement Status

Requirement Type	Enrollment ID	Session	Status	Status Date	Window Dates	Result
Anniversary	33248070	101	SATISFIED	03/14/2014	05/22/2014 01/23/2014- 05/22/2014	03/14/2014 - CMPLT
Anniversary	33248070	101	REQUIRED	01/23/2014	01/23/2014- 05/22/2014	
Anniversary	32232978	101	SATISFIED	03/31/2011	01/23/2011- 05/22/2011	03/31/2011 - CMPLT
Anniversary	32232978	101	REQUIRED	01/24/2011	01/23/2011- 05/22/2011	
Anniversary	29926936	101	SATISFIED	08/03/2004	07/02/2004- 10/29/2004	08/03/2004 - CMPLT
Anniversary	29926936	101	REQUIRED	07/02/2004	07/02/2004- 10/29/2004	

Filing History

Date	Type	Submitted by
12/06/2016	U6 CRD Individual	FINRA
05/26/2015	U5 Full	MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED (7691)
05/04/2015	U4 Amendment	MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED (7691)
02/13/2015	U4 Amendment	MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED (7691)
01/08/2015	U4 Amendment	MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED (7691)
06/12/2014	U4 Amendment	MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED (7691)
05/16/2014	U4 Amendment	MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED (7691)
02/12/2014	U4 Amendment	MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED (7691)
11/15/2013	U4 Amendment	MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED (7691)
06/04/2013	U4 Amendment	MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED (7691)
01/15/2013	U4 Amendment	MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED (7691)
11/19/2012	U4 Amendment	MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED (7691)
11/15/2012	U4 Initial	MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED (7691)
10/03/2012	NRF Initial	MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED (7691)
06/11/2012	U5 Full	BARCLAYS CAPITAL INC. (19714)
05/07/2012	U4 Amendment	BARCLAYS CAPITAL INC. (19714)

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Individual **4554902 - SCHWARTZ, MICHAEL DAVID**

Administrative Information

Filing History

Date	Type	Submitted by
11/04/2011	U4 Amendment	BARCLAYS CAPITAL INC. (19714)
07/15/2011	U4 Amendment	BARCLAYS CAPITAL INC. (19714)
05/04/2011	U4 Amendment	BARCLAYS CAPITAL INC. (19714)
05/02/2011	U4 Amendment	BARCLAYS CAPITAL INC. (19714)
12/06/2010	U4 Amendment	BARCLAYS CAPITAL INC. (19714)
11/09/2010	U5 Full	J.P. MORGAN SECURITIES LLC (79)
10/29/2010	U4 Amendment	BARCLAYS CAPITAL INC. (19714)
10/29/2010	U4 Relicense All	BARCLAYS CAPITAL INC. (19714)
04/20/2010	U4 Amendment	J.P. MORGAN SECURITIES LLC (79)
09/30/2009	U4 Amendment	J.P. MORGAN SECURITIES LLC (79)
06/18/2009	U4 Willful Questions Update	J.P. MORGAN SECURITIES LLC (79)
01/26/2009	U4 Amendment	J.P. MORGAN SECURITIES LLC (79)
11/26/2008	U4 Initial	J.P. MORGAN SECURITIES LLC (79)
10/14/2004	U5 Full	CITICORP INVESTMENT SERVICES (23988)
10/12/2004	U5 Full	BANC ONE SECURITIES CORPORATION (16999)
09/16/2004	U4 Relicense All	CITICORP INVESTMENT SERVICES (23988)
08/26/2003	U4 Relicense All	BANC ONE SECURITIES CORPORATION (16999)
08/19/2003	U5 Full	AMERIPRISE FINANCIAL SERVICES, INC. (6363)
07/11/2003	U4 Amendment	AMERIPRISE FINANCIAL SERVICES, INC. (6363)
06/24/2002	U4 Initial	AMERIPRISE FINANCIAL SERVICES, INC. (6363)

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Individual 4554902 - SCHWARTZ, MICHAEL DAVID

Reportable Events

Number of Reportable Events

Bankruptcy	1
Bond	0
Civil Judicial	0
Criminal	0
Customer Complaint	0
Internal Review	0
Investigation	0
Judgment/Lien	2
Regulatory Action	1
Termination	0

Occurrence#	1681827	Disclosure Type	Bankruptcy
FINRA Public Disclosable	Yes	Reportable	Yes

Material Difference in Disclosure No

Filing ID 38432377 Form (Form Version) U4 (05/2009)

Filing Date 02/13/2015

Source 7691 - MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

Disclosure Questions Answered 14K(1)

Bankruptcy/SIPC/Compromise with Creditors DRP DRP Version 05/2009

1. Action type: Bankruptcy
Chapter 7

2. Action date/Explanation: 11/12/2013

3. Organization:

A. Organization name:

B. Position, title or relationship:

C. Investment-related business:

4. Court: Federal Court

A. Name of court: UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF ILLINOIS

B. Location of court: CHICAGO, IL

C. Docket/Case#: 13-44047

5. Currently pending: No

6. Disposition type: Dismissed

7. Disposition date/Explanation: 01/16/2015

8. Compromise with creditors:

A. Name of creditor:

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Individual 4554902 - SCHWARTZ, MICHAEL DAVID

Reportable Events

Bankruptcy/SIPC/Compromise with Creditors DRP DRP Version 05/2009

B. Original amount owed:

C. Terms/compromise
reached with creditor:

9. Trustee/Payment:

A. Amount paid:

The name of the trustee:

B. Currently open:

C. Direct Payment

Initiated

Date/Explanation:

10. Comment:

Occurrence#	1740026	Disclosure Type	Judgment/Lien
FINRA Public Disclosable	Yes	Reportable	Yes
Material Difference in Disclosure	No		
Filing ID	38163174	Form (Form Version)	U4 (05/2009)
Filing Date	01/08/2015		
Source	7691 - MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED		
Disclosure Questions Answered	14M		

Judgment/Lien DRP DRP Version 05/2009

1. Judgment/Lien Amount: \$254,771.93

2. Judgment/Lien holder: FEDERAL HOME LOAN MORTGAGE CORPORATION

3. Judgment/Lien type: Civil

4. A. Date Filed with
Court/Explanation:

B. Date Individual
Learned/Explanation:

5 Court: State Court

A. Name of court: CIRCUIT COURT OF COOK COUNTY

B. Location of court: COOK COUNTY, IL

C. Docket/Case#: 14 CH 014646

6. Outstanding: Yes

7. Not outstanding:

A. Disposition
date/Explanation:

B. Resolution:

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Individual 4554902 - SCHWARTZ, MICHAEL DAVID

Reportable Events

Judgment/Lien DRP	DRP Version 05/2009		
8 Comment			
Occurrence#	1745257	Disclosure Type	Judgment/Lien
FINRA Public Disclosable	Yes	Reportable	Yes
Material Difference in Disclosure	No		
Filing ID	38432377	Form (Form Version)	U4 (05/2009)
Filing Date	02/13/2015		
Source	7691 - MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED		
Disclosure Questions Answered	14M		

Judgment/Lien DRP	DRP Version 05/2009
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1 Judgment/Lien Amount:	\$342,857.14
2 Judgment/Lien holder:	BARCLAYS CAPITAL INC.
3 Judgment/Lien type:	Civil
4. A. Date Filed with Court/Explanation:	01/16/2015
B. Date Individual Learned/Explanation:	01/16/2015
5. Court:	State Court
A. Name of court:	CIRCUIT COURT OF COOK COUNTY
B. Location of court:	COOK COUNTY, IL
C. Docket/Case#:	14 CH 15180
6. Outstanding:	Yes
7. Not outstanding:	
A. Disposition date/Explanation:	
B. Resolution:	
8. Comment:	

Occurrence#	1912515	Disclosure Type	Regulatory Action
FINRA Public Disclosable	Yes	Reportable	Yes
Material Difference in Disclosure	No		
Filing ID	45182007	Form (Form Version)	U6 (05/2009)
Filing Date	12/06/2016		
Source	FINRA		
Disclosure Questions Answered			

Regulatory Action DRP	DRP Version 05/2009
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Individual 4554902 - SCHWARTZ, MICHAEL DAVID

Reportable Events

Regulatory Action DRP

DRP Version 05/2009

1. Regulatory Action initiated by:
 - A. Initiated by: Self Regulatory Organization
 - B. Full name of regulator: FINRA
2. Sanction(s) sought: Suspension
3. Date initiated/Explanation: 04/21/2016
4. Docket/Case#: 20160499725
5. Employing firm: n/a
6. Product type(s): No Product
7. Allegation(s): Respondent Schwartz failed to comply with an arbitration award or settlement agreement or to satisfactorily respond to a FINRA request to provide information concerning the status of compliance.
8. Current status: Final
9. Limitations or restrictions while pending:
10. If on appeal:
 - A.Appealed to:
 - B. Date appealed/Explanation:
 - C. Limitations or restrictions while on appeal:
11. Resolution details:
 - A. Resolution detail: Decision
 - B. Resolution date/Explanation: 12/01/2016
12. Final order: No
13. Sanction detail:
 - A. Sanctions ordered: Monetary Penalty other than Fines
Suspension
 - B. Other sanctions:
 - C. Willful violation or failure to supervise:
 - i. Willfully violated:
 - ii. Willfully aided, abetted, counseled, commanded, induced,

Individual 4554902 - SCHWARTZ, MICHAEL DAVID

Reportable Events

Regulatory Action DRP

DRP Version 05/2009

or procured

- iii. Failed reasonably to supervise another person;

D. Sanction type details:

Sanction type: Suspension

Registration capacities affected: Any capacity

Duration (length of time)/Explanation: n/a

Start date/Explanation: 12/01/2016

End date/Explanation:

E. Requalification type details:

F. Monetary related sanction type details:

Monetary related sanction type: Monetary Penalty other than Fines

Total amount: \$2,206.50

Portion levied: \$2,206.50

Payment plan:

Payment plan current:

Date paid / Explanation:

Penalty waived: No

Amount:

14. Comment:

On April 21, 2016, FINRA's Office of Dispute Resolution notified Schwartz that, under FINRA Rule 9554, his registration would be suspended effective May 12, 2016, because he had not paid an arbitration award. Schwartz timely filed a request for a hearing and claimed a bona fide inability to pay the award, but he subsequently withdrew that defense. In its place, he asserted the defense that he and the arbitration creditor had settled the award. After the hearing and a review of the record, the Hearing Officer finds Schwartz did not meet his burden of proving a settlement of the award. Effective December 1, 2016, he is suspended from associating with any member firm in any capacity until he produces sufficient documentary evidence to FINRA showing: (1) the award has been paid in full; (2) he and the arbitration creditor have agreed to settle the matter; or (3) he has filed a petition in a United States Bankruptcy Court, or a United States Bankruptcy Court has discharged the debt representing the award. Schwartz is also ordered to pay FINRA costs of \$2,206.50. (Associated Case No. ARB160019)

Regulator Archive and Z Records

<<No Regulator Archive and Z Records found for this Individual.>>

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Individual 4554902 - SCHWARTZ, MICHAEL DAVID

EXHIBIT C



VIA OVERNIGHT MAIL

April 21, 2016

Michael David Schwartz
CRD #: 4654902
8360 DOLFOR COVE
Chicago, IL 60527

Subject: FINRA Dispute Resolution Arbitration Number 12-02453
Barclays Capital Inc. vs. Michael Schwartz

Dear Mr. Schwartz:

Please be advised that an arbitration award was rendered against you in connection with the above FINRA arbitration. FINRA has been advised that you have not complied with the award or satisfactorily responded to its request for information concerning the status of compliance.

Pursuant to Rule 9554, you are hereby given notice of FINRA's intent to suspend your association with FINRA member firms in any capacity based upon your failure to comply with the award. The suspension will be effective on **May 12, 2016** (the "Effective Date"), unless, before that date, you demonstrate to the undersigned that you have either:

1. paid the award in full;
2. entered into a fully-executed, written settlement agreement with the claimant(s), and your obligations thereunder are current;
3. timely filed an action to vacate or modify any award and such motion has not been denied; or
4. filed for bankruptcy protection and the award has not been deemed by a Federal court to be non-dischargeable (collectively, the "Rule 9554 enumerated defenses").

The Effective Date already takes into account any additional response time permitted under Rule 9138. If you are suspended, the suspension will continue until documentary evidence is provided to FINRA that one or more of the four enumerated Rule 9554 Defenses has occurred.

You also have the right to request a hearing before the FINRA Office of Hearing Officers to assert any of the Rule 9554 defenses (a bona fide inability to pay the award may also be a factor in determining whether any sanction for failure to pay the award is excessive or oppressive). Any hearing request must be in writing and filed before the Effective Date with the Office of Hearing Officers. A timely request for a hearing will stay the Effective Date of the suspension.

In order to assert your right to a hearing, you should mail your written request to Courtney Reynolds, Case Administrator, FINRA Office of Hearing Officers, 1735 K Street, NW, Washington, DC, 20006-1506. You may also submit your request for a hearing by email to OHCCaseFilings@finra.org.

The request for a hearing must set forth, with specificity, any and all defenses to suspension under this notice.

NO ASPECT OF THE ARBITRATION PROCEEDINGS OR ARBITRATION AWARD, IF APPLICABLE, WILL BE SUBJECT TO REVIEW OR CONSIDERATION DURING ANY SUCH HEARING ON THE PROPOSED SUSPENSION. If a request for a hearing is not timely filed, this notice shall constitute final FINRA action.

If a hearing is timely requested, the proceeding will be conducted under Procedural Rule 9559. **The hearing will be held within 30 days after you file your written request for the hearing.** *In addition, if you file the request based on your asserted inability to pay, shortly after commencement of the proceeding you will be required to provide complete financial information, including documentation in support of your asserted inability to pay defense*

In hearing cases, under Rules 8310(a) and 9559(n), a Hearing Officer or a Hearing Panel may approve, modify, or withdraw any and all sanctions or limitations imposed by this notice, and may impose any other fitting sanctions.

Please treat this letter as written notification that you are now the subject of a proceeding through which you could be suspended from associating with any FINRA member. In the event you are suspended from associating with any FINRA member, be advised that you are obligated to update your Form U4 (Uniform Application for Securities Industry Registration or Transfer).

Based upon the advice of the U.S. Postal Service and law enforcement authorities, FINRA and its family of companies will no longer open or accept any mail (envelopes or packages) that does not have complete return names and addresses. Please be sure when sending mail to FINRA that your information is fully and appropriately labeled.

Very truly yours,

Kristine Vo
212-858-4106 Fax: 301-527-4741
kristine.vo@finra.org

AS1:chl:LS00M
idr: 07/22/2014

CC:
Patrick G. King, Esq, Barclays Capital Inc.
Ulmer & Berne, LLP, 500 West Madison Street, Suite 3600, Chicago, IL 60661-4587

Edward Wegener, FINRA District Director

Courtney Reynolds, Office of Hearing Officers

Malia Langley, FINRA Finance



12-02453
8085 0505 3355

0215

1 From Please print and press here.
Date 4-21-14 Sender's FedEx Account Number 2107-9875-7

2 Your Internal Billing Reference
FedEx account and option selected.

3 To
Michael David Schwartz
[REDACTED]
Chicago, IL

4 Express Package Service Domestic International
Packages up to 150 lbs.
For packages over 150 lbs. see Domestic FedEx Express Freight G7-A-22

5 Packaging FedEx Envelope* FedEx Pak* FedEx Box FedEx Tube

6 Special Handling and Delivery Signature Options
 SATURDAY Delivery
FedEx Standard Overnight, FedEx 2Day A.M., or FedEx Express Saver
 No Signature Required
Permit delivery to a location where delivery is not possible or required.
 Direct Signature
Delivery to a business address. May sign for delivery. For options
 Indirect Signature
Delivery to a residence or location where delivery is not possible or required. For options
Does this shipment contain dangerous goods?
 No Yes Yes Yes Yes Yes Yes
Dangerous goods definition by law current in Chicago, IL. FedEx packages are shipped in United Nations containers.
 Dry Ice By law, 3.00 lbs. Cargo Aircraft Only

7 Payment Cash Enter FedEx Acct. No. or Credit Card No. below.
 FedEx Account Number Recipient Third Party Credit Card Cash/Check
For options

Total Packages Total Weight Total Declared Value*

*The liability stated in G7-A-22 relates to packages weighing less than 150 lbs. For packages weighing 150 lbs. or more, refer to the section entitled "G7-A-22" and to the section "G7-A-22" for packages weighing 150 lbs. or more.

Rev Date 2/13 • Page 00033773 • G7-A-22 FedEx • PRINTED 04-21-14 09:26

0120033773

611



May 20,2016

Dear Customer.

The following is the proof-of-delivery for tracking number 808505053355.

Delivery Information:

Status:	Delivered	Delivered to:	Residence
Signed for by:	Signature not required	Delivery location:	IL
Service type:	FedEx Priority Overnight	Delivery date:	Apr 22, 2016 09 18
Special Handling:	Deliver Weekday		
	Residential Delivery		

NO SIGNATURE REQUIRED

Proof-of-delivery details appear below; however, no signature is available for this FedEx Express shipment because a signature was not required.

Shipping Information:

Tracking number:	808505053355	Ship date:	Apr 21, 2016
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Recipient:
IL US

Shipper:
NEW YORK, NY US

Thank you for choosing FedEx.

EXHIBIT D

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

1

[REDACTED] 10

Patrick G. King
Ulmer & Berne LLP
500 West Madison Street, Suite 3600
Chicago, Illinois 60661

imcmedia

8.

Patrick G. King
Ulmer & Berne LLP
500 West Madison Street, Suite 3600
Chicago, Illinois 60661

11.

with the

1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

JUDGMENT DESTOR

Michael D. Schwartz

Dated: May 18 2016

Dated: May 18, 2016

BARCLAYS CAPITAL, INC.

By:

~~11/11/08~~

One of its Attorneys

Matthew Flinders

Dated: May 17, 2016

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

BARCLAYS CAPITAL INC.,)
Plaintiff,) Case No. 2014-CH-15180
v.) Transferred to Law Division 03/15T
MICHAEL SCHWARTZ,) Judge Alexander P. White
Defendant.) Calendar 5

STIPULATION AND AGREED ORDER

Pursuant to 735 ILCS § 5/2-1009 and their agreement to resolve the supplementary proceeding in the above entitled cause, the Parties hereby stipulate and agree as follows:

1. Subject to the terms of the settlement agreement entered on May 17, 2016, Defendant Michael Schwartz ("Schwartz") agrees to waive, release and forever discharge any and all interest in or claim to the Restricted Stock Units currently held by Bank of America-Merrill Lynch. Schwartz also consents to having Bank of America-Merrill Lynch liquidate the referenced Restricted Stock Units as they became vested and the payment of the proceeds to Plaintiff Barclays Capital Inc. ("Barclays") within 15 business days of such settlement.
2. Subject to the terms of the settlement agreement entered on May 17, 2016, Barclays agrees to waive, release and forever discharge any right to a turnover of the vehicle identified on Schedule B of Schwartz's bankruptcy petition filed November 12, 2013. Barclays also agrees to waive, release and forever discharge any right to a turnover and/or a quitclaim deed with respect to the interest held by Schwartz, individually, and/or the Michael D. Schwartz Revocable Trust, collectively, in the real property located in Allegan County, Michigan, Cheshire Township, parcel number 03-015-013-00.
3. Subject to the terms of the settlement agreement entered on May 17, 2016, this stipulation shall not be construed as waiving any right of Barclays to full satisfaction of the final judgment in Case No. 2014 CH 15180, including, Barclays' right to any and all unpaid interest or attorney's fees allowable by law or contract, as of the date of the filing of this supplementary proceeding, or right to take any action to collect from Schwartz's future income and/or assets.
4. Subject to paragraphs 1 through 3 above and the terms of their settlement agreement entered on May 17, 2016, the Parties hereby stipulate and agree to the voluntary dismissal of the supplementary proceeding in the above entitled cause, with each party to bear their own attorney fees and costs, and respectfully request that the Court enter the Parties' proposed Agreed Order to that effect.

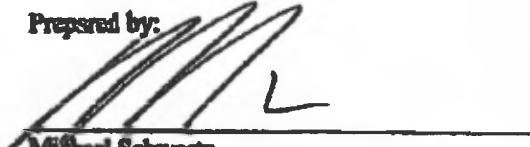
This cause coming before the Court on the stipulation of the parties, the Court being fully advised in the premises, and the parties being in agreement, IT IS HEREBY ORDERED THAT:

- a. The supplementary proceeding in the above entitled cause be and the same is hereby dismissed without prejudice.
- b. The Parties shall each bear their own attorney fees and costs incurred in this supplementary proceeding.

Dated this 19th day of May, 2016

The Honorable Alexander P. White

Prepared by:



Michael Schwartz
8360 Dolfor Cove
Burr Ridge, Illinois 60527

Pro Se Counsel for Debtor

Dated May 18, 2016



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Dated May 17, 2016

EXHIBIT E

ADMINISTRATIVE PROCEEDING
FILE NO. 3-12933

RECEIVED

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
March 20, 2008

Office of General Counsel

In the Matter of the Application of

SCOTT EPSTEIN
c/o
George L. Mahr, II
Mahr and Mahr, LLC
80 Main Street
P.O. Box 534
Madison, NJ 07940

ORDER
DENYING
STAY OF BAR

For Review of Disciplinary Action by

FINRA

Scott Epstein, a former registered representative with Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), a member of the Financial Industry Regulatory Authority ("FINRA"), 1/ has appealed from FINRA disciplinary action. In a December 20, 2007 decision, FINRA found that Epstein made unsuitable mutual fund switch recommendations to customers in violation of NASD Rules 2310, 2110, and IM-2310-2. 2/ For these violations, FINRA barred

1/ On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Securities Exchange Act Rel. No. 56146 (July 26, 2007), 91 SEC Docket 517. Because the final disciplinary action on appeal here was taken after the consolidation, references to FINRA herein shall include references to NASD.

2/ NASD Rule 2310 requires that, in recommending the purchase, sale, or exchange of any security to a customer, a member must have reasonable grounds for believing that the recommendation is suitable for that customer based on the facts, if any, disclosed by the

(continued...)

Epstein from acting in any capacity with any member firm. 3/ On February 27, 2008, more than two months after the FINRA decision, Epstein filed a motion with the Commission seeking a stay of the bar imposed by FINRA, pending his appeal to the Commission. 4/ For the reasons discussed below, it does not appear appropriate to grant Epstein's stay request. 5/

I.

FINRA found that Epstein engaged in a pattern of recommending mutual fund switch transactions to twelve Merrill Lynch Financial Advisory Center ("FAC") customers from October 2001 to February 2002, and that those transactions were unsuitable. FINRA found that "the preponderance of the evidence in this case indicates the existence of a pattern of switches from one fund to another that were recommended by Epstein to the [FAC] customers with whom he dealt" and that "Epstein failed to introduce any evidence showing that he had any reasonable grounds to believe that his recommendations to switch from one fund to another were suitable." FINRA concluded that "the preponderance of the evidence establishes that Epstein routinely recommended switch transactions that caused customers to incur sales charges, triggered new and lengthy [contingent deferred sales charge] holding periods, and burdened customers with higher fund expenses."

2/ (...continued)

customer as to his other securities holdings and the customer's financial situation and needs. NASD Rule IM-2310-2 imposes on members and registered representatives an "implicit" obligation of "fair dealing" in relationships with customers. NASD Rule 2110 requires the observance of "high standards of commercial honor and just and equitable principles of trade." A violation of the NASD suitability rule is also a violation of NASD Rule 2110. See, e.g., Wendell D. Belden, 56 S.E.C. 496, 505 (2003).

3/ FINRA also assessed costs.

4/ Epstein's stay motion contains additional requests for relief. Epstein also seeks orders directing FINRA to (1) produce a copy of the FINRA subcommittee's decision detailing findings of fact and conclusions of law, (2) produce the names of FINRA members who participated in rendering the final decision, (3) produce various documents and recordings relating to FINRA matters or to Merrill Lynch, and (4) issue subpoenas compelling testimony from various Merrill Lynch customers and FINRA executives. Epstein's additional requests will be addressed at a later date.

5/ Although Epstein requested expedited consideration of his stay motion, such consideration is unavailable to him. Rule of Practice 401(d)(3), 17 C.F.R. § 201.401(d)(3), requires that a request for expedited consideration be filed "within 10 days of the effectiveness of the action, or where the action complained of, will, by its terms, take effect within five days of the filing of the motion for stay"

In barring Epstein, FINRA found that Epstein's misconduct was "egregious" in that he "abused the trust of the customers with whom he dealt . . ." FINRA also found "disquieting" Epstein's "failure to accept responsibility for his own actions" and the Hearing Panel's determination that "Epstein was not forthright in testimony given by him to FINRA staff during the investigation of this matter." In addition, FINRA found that "Epstein's demonstrated insouciance and indifference towards his responsibilities under NASD rules poses a serious risk to the investing public." Rejecting Epstein's claims of mitigation, FINRA concluded that a bar was necessary "to prevent Epstein from inflicting the same harm upon customers in the future that he inflicted upon his customers in this case."

II.

The Commission generally has considered the following factors in determining whether to grant a stay: (1) the likelihood that the moving party will eventually succeed on the merits of its appeal; (2) the likelihood that the moving party will suffer irreparable harm without a stay; (3) the likelihood that another party will suffer substantial harm as a result of a stay; and (4) a stay's impact on the public interest. 6/ The burden of establishing the appropriateness of a stay is on the moving party, Epstein. 7/

In support of his stay request, Epstein introduces an affidavit from his counsel (the "Affidavit") challenging the fairness of the bar, alleging conflicts of interest among FINRA, its offices, and Merrill Lynch, and assigning error to the FINRA Hearing Officer, the Hearing Panel, a FINRA subcommittee, and FINRA's National Adjudicatory Council (the "NAC"). The Affidavit asserts that the bar is "unfair" because, "upon information and belief," Epstein was the only one among "numerous other" Merrill Lynch representatives employed at the FAC who violated FINRA suitability rules. The Affidavit also alleges that Epstein's bar "is a result of the conflicts of interest that exist among FINRA, the NASD, the [NASD Department of Enforcement], the Office of the Hearing Officers, the Office of Regulatory Policy and Oversight, the NAC and Merrill Lynch." The Affidavit cites Epstein's application for review, stating that Epstein seeks a stay until he is "afforded the opportunity to present the exculpatory and mitigating evidence he was prevented from presenting to the [H]earing [P]anel." The Affidavit further faults the "organizational structure of FINRA" for being "permeated with conflicts of interests . . ." The Affidavit assigns error to the Hearing Officer, the Hearing Panel, the FINRA subcommittee, and the NAC for, among other things, restricting evidence, making erroneous discovery rulings, accelerating the disciplinary proceedings, permitting introduction of certain

6/ See, e.g., Intelspan, Inc., 54 S.E.C. 629, 631 (2000); Stratton Oakmont, Inc., 52 S.E.C. 1150, 1152 & n.4 (1996) (citing Cuomo v. Nuclear Regulatory Comm'n, 772 F.2d 972, 974 (D.C. Cir. 1985)).

7/ See, e.g. Millenia Hope, Inc., Exchange Act Rel. No. 42739 (May 1, 2000), 72 SEC Docket 965, 966.

evidence, failing to subpoena certain witnesses, including customers and FINRA and Merrill Lynch executives, and exhibiting bias.

FINRA opposes Epstein's motion for a stay. FINRA asserts that it is unlikely that Epstein's appeal will prevail on the merits given the "considerable evidence" of his violations. FINRA argues that the "specific grounds on which the NAC based its decision to bar Epstein exist in fact." FINRA disputes "that a bar in this case would cause [Epstein] any injury that can be characterized as irreparable." In this regard, FINRA contends that, "[e]ven assuming Epstein currently desired to associate with a FINRA member-broker dealer, and was unable to do so as a result of the bar," the potential financial impact "would not [rise] to the level of irreparable injury." FINRA states further that the "violations here were extensive [and] extremely serious." FINRA observes that, "[i]n light of [its] duty to protect the investing public and ensure the integrity of the market, the NAC found that it must act decisively in cases, like this one, in which the evidence proves that Epstein lacks an understanding of his duties as a registered person to ensure that he recommends suitable transactions." FINRA argues that the public interest would be furthered "by allowing the bar to remain in place until [the Commission] can undertake a full review of this case."

Based on the parties' filings, it appears that Epstein has not satisfied the burden required to establish the appropriateness of a stay of the bar against him. Although any formal resolution must await the Commission's determination on the merits of Epstein's appeal, it is not clear at this stage that Epstein will prevail on the merits. Moreover, it does not appear that Epstein, who apparently has not been employed in the securities industry for several years, will suffer irreparable harm without a stay.^{8/} It should be noted, in this connection, that Epstein did not file his stay request until more than two months after the bar issued.

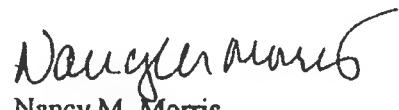
FINRA found that Epstein's violations were egregious. Granting a stay pending resolution of Epstein's appeal would allow Epstein to reenter the industry and expose customers to the risk of further violations. Any detriment that Epstein may incur from the denial of his stay

^{8/} We have held repeatedly that "the fact that an applicant may suffer financial detriment does not rise to the level of irreparable injury warranting issuance of a stay." Richard L. Sacks, Exchange Act Rel. No. 57028 (Dec. 21, 2007), SEC Docket ____.

request is outweighed by the danger that he would pose to the investing public. 9/ Under the circumstances and based on the parties' filings, therefore, the granting of Epstein's stay request is not warranted.

Accordingly, IT IS ORDERED that the request of Scott Epstein for a stay of the bar imposed against him by FINRA, in its decision dated December 20, 2007, pending the Commission's consideration of Epstein's appeal be, and it hereby is, denied.

For the Commission by the Office of the General Counsel, pursuant to delegated authority.



Nancy M. Morris
Secretary

9/ See John Montelbano, Exchange Act Rel. No. 45107 (Nov. 27, 2001), 76 SEC Docket 1023, 1029 (denying stay in part because detriment was "outweighed by the necessity of protecting the public interest").



Financial Industry Regulatory Authority

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January 4, 2017

VIA MESSENGER

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Room 10915
Washington, DC 20549-1090



RE: In the Matter of the Application for Review of Michael David Schwartz
Administrative Proceeding No. 3-17752

Dear Mr. Fields:

Enclosed please find the original and three (3) copies of FINRA's Brief in Opposition to Request for Stay in the above-captioned matter.

Please contact me at (202) 728-8083 if you have any questions.

Very truly yours,

Jennifer Brooks

Enclosures

cc: Michael David Schwartz (via FedEx)