

TRANSMISSION VERIFICATION REPORT

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PAGE(S) 17
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Keith P. Sequeira

██████████ · Middletown · NJ ██████████
Telephone: ██████████ · E-Mail: ██████████

September 14, 2020

Office of General Counsel
FINRA
1735 K Street NW
Washington
DC 20006

Office of the Secretary
SEC
100 F Street NE
Mail Stop 1090 - Room # 10915
Washington
DC 20549

Dear Sirs,

Keith P. Sequeira hereby requests that his suspension be set aside and that he be compensated for FINRA's libelous statements that were published - uncorrected - for 394 days.

1. The relevant facts in Arbitration-I,¹ Arbitration-II,² Arbitration-III(R)³ and Sequeira-IV⁴ are incorporated by reference and, for the reasons there stated, Sequeira alleges that:

- (a) FINRA's "action[s], findings, and conclusions," in Arbitration-III(R)³ violated 5 U.S.C. §706;

¹ "Arbitration-I" refers to *Wells Fargo Advisors, LLC v. Keith*
No. 12-01960 (Aug. 5, 2014). FINRA's decision

TRANSMISSION VERIFICATION REPORT

TIME : 09/14/2020 04:51PM
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Keith P. Sequeira

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- (a) FINRA's "action[s], findings, and conclusions," in Arbitration-III(R)³ violated 5 U.S.C. §706;

¹ "Arbitration-I" refers to *Wells Fargo Advisors, LLC v. Keith P. Sequeira*, Case No. 12-01869 (Aug. 5, 2014). FINRA's decision in Arbitration-I is referred to herein as "Award."

² "Arbitration-II" refers to *Regulatory Operations v. Keith Patrick Sequeira*, Expedited Proceeding No. ARB160035, STAR No. 20160510627 (Nov. 18, 2016). FINRA's decision in Arbitration-II is referred to herein as "FINRA-II."

³ "Arbitration-III(R)" refers to *Regulatory Operations v. Keith Patrick Sequeira (On Remand)*, Expedited Proceeding No. ARB160035, STAR No. 20160510627 (Dec. 21, 2017). FINRA's decision in Arbitration-III(R) is referred to herein as "FINRA-III(R)."

⁴ "Sequeira-IV" refers to *Sequeira v. Securities & Exchange Commission*, No. 19-1997 (3d Cir. Jun. 11, 2020).

(b) FINRA-II² continuously published – for 394 days – uncorrected libelous statements directed at Sequeira;

(c) FINRA ignored “newly discovered evidence”⁵ and thus “unlawfully withheld or unreasonably delayed”⁶ the setting aside of Sequeira’s suspension.

2. On July 22, 2020, the Court in Sequeira-IV⁴ issued an Order denying Sequeira’s Petition for Panel Rehearing and Rehearing *En Banc* (“Petition-IV”)⁷.

3. Sequeira had thus exhausted “the prescribed administrative remedy”⁸ and – absent resolution thereof by FINRA

⁵ *Fed.R.Civ.P.*, Rule 60(2)(b).

⁶ 5 *U.S.C.* §706(1).

⁷ Petition-IV argued that the Panel:

(a) did not “decide all matters in dispute [nor] decree complete relief,” *United States v. Union Pacific Ry. Co.*, 160 *U.S.* 1, 52 (1895);

(b) did not “inquire into [whether] . . . jurisdictional issues had been fully and fairly litigated by the parties and finally determined,” *Durfee v. Duke*, 375 *U.S.* 106, 114 (1963);

(c) did not consider whether matters in issue had been “mooted by subsequent developments,” *California v. San Pablo & Tulare R. Co.*, 149 *U.S.* 308, 314 (1893).

⁸ It is a “long settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted,” *First Jersey Securities, Inc. v. Bergen*, 605 *F.2d* 690, 695 (3d Cir. 1979) (quoting *Myers v. Bethlehem Shipbuilding Corp.*, 303 *U.S.* 41, 50–51 (1938)).

and the SEC – he shall now seek “judicial relief”⁹ for the claims discussed herein on the non-exclusive basis that:

- (a) the Panel did not “decide all matters in dispute and decree complete relief;”¹⁰
- (b) the Panel’s decision was not informed by FINRA’s violations of 5 *U.S.C.* §706;¹¹

⁹ *Ibid.*

¹⁰ *Alexander v. Hillman*, 296 *U.S.* 222, 242 (1935).

¹¹ The text of 5 *U.S.C.* §706 is re-produced for context and provides as follows:

[T]he reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall –

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be –
 - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
 - (B) contrary to constitutional right, power, privilege, or immunity;
 - (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
 - (D) without observance of procedure required by law;
 - (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

- (c) the Panel did not address the issue of FINRA's libelous statements;¹²
- (d) the Panel did not consider "newly discovered evidence"⁵ which established that the Award¹ had been "discharged";¹³ and
- (e) the Panel did not require that Sequeira's suspension be "set aside"¹¹ on the grounds that it had been "mooted by subsequent developments."^{7(c)}

A. FINRA's "actions, findings, and conclusions," in Arbitration-III(R)³ violated 5 *U.S.C.* §706.

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

[5 *U.S.C.* §706].

¹² The Panel stated – without deciding the issue of libel –

(a) that FINRA's libelous statements were "outside the scope" of Sequeira-IV,⁴ Slip Op. at p.6; and

(b) that the libelous statements had "no bearing on whether FINRA's suspension met the applicable standards under Securities Exchange Act Section 19(f)," Slip Op. at pp.6-7.

¹³ Sequeira's "motion to supplement the record" with "newly discovered evidence" was denied. Slip Op. at p.7. The Panel held that he was "barred from raising it for the first time here." *Id.*

4. Arbitration-II² was a "disciplinary proceeding" described as such by the author of FINRA-II², Andrew H. Perkins, FINRA's Chief Hearing Officer.¹⁴

5. FINRA-II²:

(a) suspended Sequeira ("Suspension") "from associating in any capacity with any FINRA member firm for his failure to pay [the Award]," Pa-Br86; and

(b) provided that the Suspension shall "automatically convert" to a "bar" ("Bar") on December 18, 2016, *Ibid.*

6. Clearly, therefore, the Sanctions¹⁵ imposed by FINRA in FINRA-II² were "disciplinary" in nature pursuant to Exchange Act¹⁶ Section 19(e).

7. On December 16, 2016, Sequeira petitioned the SEC for review of FINRA-II² ("Petition-I"). Pa623-8.

8. On September 27, 2017, SEC-I¹⁷ remanded "for clarification of [whether] the sanction imposed"¹⁸ was under

¹⁴ Pa333.

¹⁵ "Sanctions" refers, collectively, to the Suspension and Bar.

¹⁶ "Exchange Act" refers to the Securities and Exchange Act of 1934.

¹⁷ "SEC-I" refers to *In the Matter of the Application by Keith Patrick Sequeira For Review of Action Taken by FINRA*, Admin. Proc. File No. 3-17734 (Sep. 29, 2017).

¹⁸ Pa-Br95.

Exchange Act Section 19(e) (Disciplinary) or Exchange Act Section 19(f) (Non-Disciplinary).

9. FINRA's "actions"¹⁹ during Arbitration-III(R)³ were "arbitrary"²⁰ and "capricious"²¹ and in flagrant disregard of "procedure required by law;"²² specifically:

- (a) FINRA did not serve upon Sequeira a notice of remand hearing as required by *Rules* 9554(a)-(d);
- (b) FINRA did not serve upon Sequeira notice of his right to request a remand hearing as required by *Rules* 9554(e)-(f); and
- (c) FINRA did not hold a remand hearing to permit Sequeira to address the issues raised in SEC-I.¹⁷

10. On December 21, 2017, FINRA-III(R)³ disregarded FINRA's *Rule* 9554 violations which had deprived Sequeira of his Due Process Right to notice and a hearing.

11. On January 19, 2018, Sequeira petitioned the SEC for review of FINRA-III(R)³ ("Petition-II").²³

¹⁹ 5 *U.S.C.* §706(2)(A).

²⁰ *Ibid.*

²¹ *Ibid.*

²² 5 *U.S.C.* §706(2)(D).

²³ Pa835-840.

12. On March 1, 2019, the SEC issued SEC-II(R).^{24,25} FINRA's *Rule* 9554 violations were disregarded. FINRA-III(R)³ was rubber stamped. The denial by FINRA of Sequeira's Due Process Right to notice and a hearing was condoned.

13. On April 29, 2019, Sequeira cited the SEC and FINRA as Respondents and petitioned the U.S. Court of Appeals for the Third Circuit for review of FINRA-II,² SEC-I,¹⁷ FINRA-III(R),³ and SEC-II(R)²⁴ ("Petition-III").

14. A 3-Judge Panel of the Court reviewed SEC-II(R)²⁴ only but did not consider:

- (a) FINRA's violations of 5 *U.S.C.* §706; and
- (b) the violations by FINRA of Sequeira's Due Process Right to notice and a hearing.

B. FINRA-II² continuously published – for 394 days – uncorrected libelous statements directed at Sequeira.

15. Mr. Perkins authored FINRA-II² which imposed "disciplinary" Sanctions and continuously published libelous statements ("Libel Statements") for a period of 394 days.²⁶

²⁴ "SEC-II(R)" refers to *In the Matter of the Application by Keith Patrick Sequeira For Review of Action Taken by FINRA*, Admin. Proc. File No. 3-17734r (Mar. 1, 2019).

²⁵ Pa1319-1333.

²⁶ FINRA abandoned the Libel Statements in FINRA-III(R)³ after 394 days of continuous publication.

16. The Libel Statements asserted:
- (a) that Arbitration-II² was a "disciplinary proceeding," Pa333;
 - (b) that Sequeira-III²⁷ was not pursued "in good faith," Pa-Br91;
 - (c) that Sequeira was "unethical[ly] us[ing] . . . a dormant court action to forestall payment and . . . leverage a claimant into accepting less than the full amount," Pa-Br92;
 - (d) that Sequeira was using "dilatory tactics to pry a compromise and settlement out of the claimant [which tactics] constituted unethical conduct and a violation of just and equitable principles of trade," Pa-Br92;
 - (e) that Sequeira had resorted to "unethical dilatory conduct . . . to justify his refusal to pay the arbitration award," Pa-Br94; and
 - (f) that FINRA-II² had "assess[ed] th[e] sanction" (Pa-Br94) having "considered" (*Ibid.*) Sequeira's "unethical dilatory conduct," *Ibid.*

17. The Libel Statements were "defamatory"²⁸ and caused Sequeira to be subjected to public ridicule.²⁹ As discussed above,

²⁷ "Sequeira-III" refers to *Keith P. Sequeira v. Wells Fargo Advisors, LLC*, Dkt. No. MON-L-3393-14 (Unpub.) (N.J. Law Div. Dec. 2, 2016).

²⁸ "A communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him," *Chuy v. Philadelphia Eagles Football Club*, 595 F.2d 1265, 1284 (3d Cir. 1979) (quoting *Corabi v. Curtis Publishing Co.*, 441 Pa. 432, 442 (1971) and *Restatement of Torts* §559 (1938)).

²⁹ Bill Singer, *Wells Fargo Promissory Note Victory Goes From FINRA Sublime To SEC Ridiculous*, March 4, 2019. <http://www.brokeandbroker.com/4468/sequeria-finra-sec/> (site last visited on November 11, 2019).

therefore, he petitioned for review (Petition-I) (¶7) and the SEC remanded (SEC-I) (¶8).

18. FINRA's "actions"¹¹ in Arbitration-III(R)³ violated its *Rules and*, among other things, omitted³⁰ all the Libel Statements. FINRA-III(R),³ in fact, purported to "make clear that the sanction imposed [was] not disciplinary in nature" (p.3).

19. FINRA's representation in FINRA-III(R)³ that the Sanctions were not "disciplinary in nature"³¹ was belied:

- (a) by contrary documentary evidence generated personally by Mr. Perkins - the author of FINRA-II^{3,14} - who explicitly admitted that Arbitration-II² was a "disciplinary proceeding"¹⁴; and
- (b) by the complete "omission"³⁰ from FINRA-III(R)³ of the Libel Statements, which included the express admission in FINRA-II² that the Sanctions had been assessed after FINRA had "considered"³² Sequeira's "unethical dilatory conduct."³³

³⁰ *Janklow v. Newsweek, Inc.*, 759 F.2d 644, 648 n.4 (8th Cir. 1985) (noting that "[a] relevant omission may, of course, be considered as evidence of the falsity of an assertion and also as evidence of the culpability of the assertor").

³¹ FINRA-II(R)³ at p.3.

³² Pa-Br94.

³³ *Ibid.*

20. FINRA's actions thus had all the hallmarks of libel²⁸ and common law fraud.³⁴

21. SEC-II(R)²⁴ nevertheless:

- (a) overlooked the fact that FINRA-III(R)³ had removed the "bar" and had abandoned an entire body of critical findings (Libel Statements), which, in FINRA-II,² had supported Exchange Act Section 19(e) (Disciplinary) Sanctions;
- (b) overlooked the further fact that FINRA-III(R)³ then purported - without notice or hearing - to "clarify" that the Sanctions in FINRA-II² had always been imposed under Exchange Act Section 19(f) (Non-Disciplinary);
- (c) noted as to Libel Statement, "unethical,"³⁵ that FINRA had not "repeated that statement"³⁶ and had thus

³⁴ "To state a claim for common law fraud, the following five elements must be pled: (1) a material misrepresentation of a presently existing or past fact; (2) knowledge or belief by the defendant of its falsity; (3) an intention that the other person rely on it; (4) reasonable reliance thereon by the other person; and (5) resulting damages. *Gennari v. Weichert Co. Realtors*, 148 N.J. 582, 610 (1997) (citing *Jewish Ctr. of Sussex County v. Whale*, 86 N.J. 619, 624-25 (1981)).

³⁵ SEC-II(R)²⁴ at p.11.

³⁶ SEC-II(R)²⁴ at p.12.

impliedly admitted that the Libel Statements were untrue and known by FINRA to be untrue;

(d) overlooked the fact that the Libel Statements had been published for 394 days;

(e) held that "defamation allegations are outside the scope of this proceeding,"³⁷ SEC-II(R)²⁴ at p.12; and

(f) rubber stamped FINRA-III(R).³

22. The Panel did not apply 5 *U.S.C.* §706 to FINRA's "arbitrary"³⁸ and "capricious"³⁹ - and, indeed, fraudulent³⁴ - findings in FINRA-II.²

C. FINRA ignored "newly discovered evidence" and thus "unlawfully withheld or unreasonably delayed" the setting aside of Sequeira's suspension.

23. On May 18, 2012, Wells Fargo⁴⁰ initiated arbitration proceedings to assert alleged rights contained in a Promissory Note ("Note"). Pa1040-44.

24. The Note was "governed by the laws of the State of Missouri" (Pa806) which guarantee an inviolate right to a jury

³⁷ SEC-II(R)²⁴ quoted *Beatrice J. Feins*, Exchange Act Release No. 33374, 1993 WL 538913, at *3 n.14 (Dec. 23, 1993) (holding that redress for claims outside the SEC's jurisdiction "must be pursued in other forums").

³⁸ 5 *U.S.C.* §706(2)(A).

³⁹ *Ibid.*

⁴⁰ "Wells Fargo" refers to Wells Fargo Advisors, LLC.

trial⁴¹ that may only be waived by one of the four methods noted by the *Randolph* Court.⁴²

25. FINRA nevertheless disregarded:

- (a) "the laws of the State of Missouri,"^{41,42} Pa806; and
- (b) the laws of the forum State of New Jersey pursuant to which the Arbitration Clause in the Note (Pa1042-3) was "unenforceable."⁴³

26. Sequeira did not agree to Arbitration-I,¹ and, in fact:

⁴¹ See *Randolph v. Simpson*, 500 S.W. 2d 289, 290 (Mo. Ct. App. 1973) (quoting Vernon's Annotated Missouri Statutes) (noting that "Article I, Section 22(a), Constitution of Missouri, V.A.M.S. solemnly guarantees 'the right of trial by jury as heretofore enjoyed shall remain inviolate.'").

⁴² "Section 510.190, subd. 2, RSMo 1969, V.A.M.S. is indicative of the aversion of this state's legislative body to dissipate the right of trial by jury by the use of waiver as a vehicle, by prescribing, with specificity, only four methods by which a party 'shall be deemed to have waived trial by jury,' same being, '(1) By failing to appear at the trial; (2) By filing with the clerk written consent in person or by attorney; (3) By oral consent in court, entered on the minutes; (4) By entering into trial before the court without objection.' *Meadowbrook Country Club v. Davis*, [421 S.W. 2d 769 (Mo. 1967)], holds that Section 510.190, subd. 2, supra, and Rule 69.01(b), V.A.M.R. promulgated and adopted pursuant thereto, provide 'the exclusive manner' for waiving trial by jury, and that such can not 'be changed or enlarged except by the legislature,' thus indicative of the aversion of the courts of this state to avow any right whatever to dissipate the right of trial by jury by the use of waiver as a vehicle. *Randolph*, supra, 500 S.W. 2d at 290-291.

⁴³ *Atalese v. U.S. Legal Serv. Group*, 99 A.3d 306, 309 (N.J. 2014), cert. den., 135 S. Ct. 2804 (2015). See *Moon v. Breathless Inc.*, 868 F.3d 209 (3d Cir. 2017) interpreting State Law.

(a) on April 28, 2014 (motion), on May 12, 2014 (oral argument), and on May 23, 2014 (motion), he moved to stay Arbitration-I¹ (Pa-Br14, n.15); and

(b) on April 28, 2014 (motion), and on May 12, 2014 (oral argument), he noticed FINRA that he was participating in Arbitration-I¹ under protest (Pa-Br14, n.16).

27. His “[u]se of either of these procedures . . . preserved the issue of arbitrability for the court.”⁴⁴

28. FINRA did not have jurisdiction to arbitrate (¶¶24–27) but nevertheless compelled Arbitration-I¹ based upon what was self-servingly described as a “mandatory arbitration clause” (Pa619) in the Note (Pa1040–44).

29. On August 5, 2014, FINRA issued an Award^{1,45} in favor of Wells Fargo Advisors, LLC (“Wells Fargo”) and against Sequeira.

30. Sequeira attacked the Award on jurisdictional grounds. The procedural history is set forth in Petition-III.¹³ The State Courts did not substantively address the issue of jurisdiction. Nor did the Panel.

⁴⁴ *Laborer’s Local Union v. Interstate Curb & Sidewalk*, 90 N.J. 450, 465–6 (1982) (citing *In the Matter of Arbitration Between Grover & Universal Underwriters Ins. Co.*, 80 N.J. 221, 230 (1979) cf. *Battle v. General Cellulose Co. Inc.*, 23 N.J. 538 (1957)).

⁴⁵ Pa-Br72–83.

31. On January 28, 2019, Wells Fargo served Sequeira with Form 1099-C Cancellation of Debt ("Form 1099-C"), which evidenced the fact that that the Award¹ in favor of Wells Fargo had been "discharged" on April 13, 2018.⁴⁶ Pa1334-5.⁴⁷

32. Sequeira received Form 1099-C after he had filed his Reply Brief dated May 11, 2018 in Petition-II.² A decision was pending. No further submissions were permitted. The SEC issued its decision, SEC-II(R),²⁴ on March 1, 2019.

33. On April 29, 2019, Sequeira filed and served Petition-III (¶13) on FINRA and the SEC. He identified therein one of the issues to be determined in Petition-III (¶13), that is, whether Wells Fargo's "discharge" of the Award¹ constituted payment in full pursuant to *Rule* 9554. He argued the issue in his opening and reply briefs. He moved to supplement the record with the Form 1099-C and envelope. Pa1334-5.

34. FINRA did not set aside the Award. Nor did the SEC.

⁴⁶ On and with effect from April 13, 2018, therefore, the Sanctions imposed by FINRA for non-payment of the Award had been "mooted by subsequent developments." *California v. San Pablo & Tulare R. Co.*, *supra*, 149 U.S. at 314.

⁴⁷ Sequeira attaches hereto the Form 1099-C together with the dated envelope in which it was mailed.

September 14, 2020

FINRA & SEC

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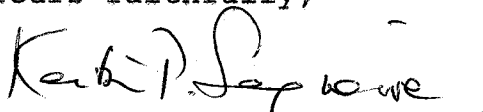
35. The Panel improvidently denied Sequeira's motion to supplement the record with the newly discovered evidence of the Form 1099-C and envelope and, having thus sanitized the record, proceeded to hold that Sequeira was "barred from raising it for the first time here." Slip Op. at p.7.

D. Wherefore,

36. Sequeira has exhausted "the prescribed administrative remedy"⁸ and hereby requests:

- (a) that the Suspension of his licenses be set aside and that this fact be reflected in Broker Check;
- (b) that he be compensated for the uncorrected publication - for 394 days - of the Libel Statements.

Yours faithfully,


Keith P. Sequeira

TAX YEAR 2018

WELLS FARGO BANK, N.A.
1-800-TO-WELLS (800-869-3557)
P.O. BOX 3908
PORTLAND, OR 97208

E.I.N. 94-1347393

COPY B
FOR BORROWER/DEBTOR

FOR TAX YEAR
2018

KEITH SEQUEIRA
MIDDLETOWN NJ

PI

TAXPAYER ID NUMBER
XXX-XX-5387

2018 - 1099-C, CANCELLATION OF DEBT		
ACCOUNT NUMBER		
FA RECRUITING	2000 F01140144045387	
BOX 1	DATE OF IDENTIFIABLE EVENT	04/13/18
BOX 2	AMOUNT OF DEBT DISCHARGED	47,895.38
BOX 4	DEBT DESCRIPTION	
CANCELLATION OF FA LOAN DEBT		
BOX 5	BORROWER WAS PERSONALLY LIABLE FOR REPAYMENT OF DEBT	
BOX 6	IDENTIFIABLE EVENT CODE	G
BOX 7	FAIR MARKET VALUE	47,895.38
TOTAL AMOUNT OF DEBT DISCHARGED		47,895.38

1099-A, Acquisition or Abandonment of Secured Property, OMB No 1545-0877 / 1099-C, Cancellation of Debt, OMB No. 1545-1424
This is important tax information and is being furnished to the IRS. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if taxable income results from this transaction and the IRS determines that it has not been reported.

PLEASE SEE REVERSE SIDE FOR INSTRUCTIONS



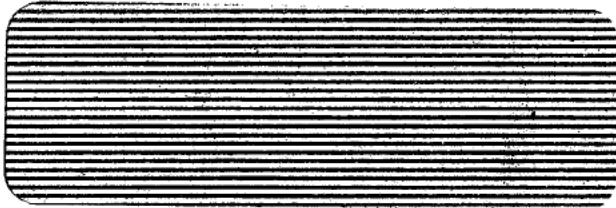


Wells Fargo
For Return Mail Purposes Only
Mac# N9777-112
PO Box 5131
Sioux Falls, SD 57117-5131

Pa 1335

IMPORTANT
Tax document enclosed

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