

**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**

ANSWER TO FINRA'S BRIEF IN OPPOSITION TO REQUEST FOR STAY

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I. INTRODUCTION

Applicant Michael David Schwartz (“Schwartz”) has in fact moved to stay the suspension imposed in a December 1, 2016 decision of a FINRA Hearing Officer. In its decision, the Hearing Officer found that Schwartz had not met his burden in proving that a settlement agreement he had entered into with Barclays Capital, Inc. (“Barclays”) eliminated his obligation to pay the award in full. As Schwartz argued before the Hearing Officer, FINRA’s Rule 9554 provides no such requirement that a settlement agreement eliminate the need to pay an arbitration award in full. The acceptable FINRA Rule 9554 defense to suspension Schwartz relies upon specifically and only requires that he “entered into a fully-executed, written settlement agreement with the claimant(s), *and your obligations thereunder are*

current, emphasis added. In contrast to the Hearing Officer's decision, and contrary to the argument which continues to be put forward by FINRA, there is no requirement that the arbitration award be paid in full or otherwise eliminated. Schwartz only needed to demonstrate that his "obligations thereunder (the settlement agreement) are current". This requirement was, and continues to be, satisfied, and no argument has yet been put forward by any party that Schwartz was not, or is not, in fact current on his obligations under the settlement agreement.

FINRA has attempted to argue that the settlement agreement in question only related to a certain citation proceeding and had no bearing on the arbitration award in question. A plain reading of the settlement agreement dispatches this argument entirely. Specifically, in the final paragraph of page 1 of the settlement agreement (provided as Exhibit D in FINRA's Brief in Opposition), it reads "WHEREAS, as set forth in the Agreement, Judgment-Debtor and Barclays wish to resolve, terminate and settle all disputes, claims *and* actions arising from the Citations without further litigation or other expense and pursuant to the terms and conditions contained herein below", emphasis added. To further highlight the depravity of FINRA's argument, the settlement agreement addressed other ongoing lawsuits involving Barclays and Schwartz that had nothing to do with the Citations. On page 2 of the settlement agreement is found "4. Waiver of Right to Appeal". Therein, Barclays and Schwartz resolved ongoing disputes and claims in an interpleader lawsuit that had nothing to do with the Citations.

That FINRA opposes Schwartz's request is unsurprising. FINRA has unclean hands in these and related matters. Schwartz has more than sufficiently met his burden of proof in order to stay the Disciplinary Action(s) and Order(s) entered by the Hearing Officer. Schwartz's primary argument itself is sufficient to support a request for stay. That Schwartz has not been employed by a member firm since May of 2015 demonstrates the harm which has already been placed on him and his family due to the ongoing actions of FINRA and Barclays. It is not, however, the inability to associate with a FINRA member firm that causes the most harm for Schwartz. That Schwartz will forever be subject to answering "YES" in any future employment application or background check that asks whether he has ever faced disciplinary action and/or suspension of a professional license is the intense harm he seeks protection from. Schwartz will effectively be precluded from securing employment in many industries, and is all but guaranteed an inability to secure any employment requiring a security clearance. The damage to Schwartz's personal and professional reputation will be immeasurable. There is a substantial likelihood that Schwartz will prevail on the merits of his appeal, and he has amply satisfied the burden necessary to stay the Disciplinary Action(s) and Order(s) entered by the Hearing Officer.

FINRA has only spoken in opposition to the stay as it relates to the effectiveness of Schwartz's suspension. Schwartz specifically requested a stay of the Disciplinary Action(s) and Order(s) entered by the Hearing Officer which are broader than just his suspension. This would include but not be limited to the costs assessed, as well

as the Order(s) relating to requests for disciplinary action to be taken against certain FINRA employees and a certain third-party. Here, FINRA has acquiesced.

The Commission therefore should grant Schwartz his request for a stay of the Disciplinary Action(s) and Order(s) entered by the Hearing Officer.

II. ARGUMENT

Schwartz has demonstrated that the Commission should grant his request for a stay of the Disciplinary Action(s) and Order(s) entered by the Hearing Officer pending resolution of his appeal. Schwartz has demonstrated a likelihood of success on the merits, he has demonstrated that he has, and will, suffer irreparable harm, he has demonstrated that there will be no harm to other parties by a stay being entered, and he has demonstrated that granting a stay is in the intense public interest.

Schwartz's request is based on the foundations of fairness, equity, and common sense. That FINRA suggests precluding Schwartz from participating in the securities industry is in the public interest is troubling. As the original dispute between Schwartz and Barclays was intra-industry and involved no member of the public or customer, and because Schwartz has never had so much as a single customer complaint or negative performance review in his nearly 14 years in the financial services industry, any assertion about Schwartz's suspension being in the public interest is absurd. That FINRA has suggested Schwartz received the "fair procedure" that the Securities Exchange Act of 1934 ("Exchange Act") requires is even more troubling. The Exchange Act doesn't simply require that a process be in

place in order to meet its fairness requirement...the Exchange Act demands that the process itself must be fair. This deprived spin of the Exchange Act, as demonstrated in FINRA's brief (at page 5, note 4), only adds support to Schwartz's argument that FINRA has unclean hands in these and related matters.

Considering the importance of these and related matters, and considering how these and related matters are of intense public interest, the Commission will in fact further the public interest by granting Schwartz's request for a stay of the Disciplinary Action(s) and Order(s) entered by the Hearing Officer.

III. CONCLUSION

For the reasons discussed herein, the Commission must grant Schwartz's request for a stay of the Disciplinary Action(s) and Order(s) entered by the Hearing Officer.

Respectfully,



Michael Schwartz, Pro Se

Burr Ridge, IL

January 17, 2017

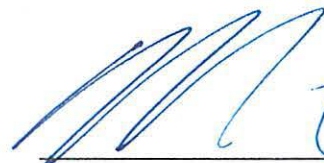
CERTIFICATE OF SERVICE

I, Michael Schwartz, Pro Se, certify that on the 17th day of January, 2017, I caused copies of the foregoing **ANSWER TO FINRA'S BRIEF IN OPPOSITION TO REQUEST FOR STAY**, In the Matter of the Application of Michael David Schwartz, Administrative Proceeding File No. 3-17752, to be similarly served on the following parties via USPS:

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Respectfully,



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