

1 Daniel Motherway

2 Marietta, GA

4 US SECURITIES AND EXCHANGE COMMISSION

6 IN THE MATTER OF THE APPLICATION OF
7 DANIEL PAUL MOTHERWAY
8 FOR REVIEW OF ACTION TAKEN BY
9 FINRA

Admin. Proc. File No 3-19897

BRIEF IN SUPPORT OF APPLICATION

10 This is a brief in support of my application for appeal of FINRA Expedited Case ARB200006
11 STAR No. 20200655490. An index has been filed in this matter on 8/12/20 by FINRA. This brief will enumerate
12 the many reasons why the decision in the Expedited Case was incorrect and should be reversed. My inability to pay
13 defense should be supported by the SEC based upon FINRA Rule 9554 and its requirements.

14 As indicated on page 3 of Hearing Officer Daniel D. McClain's decision (BATES 000473, 2020),
15 he reiterates the standard for proving an inability-to-pay defense. Specifically, "He must show that he cannot reduce
16 his living expenses, borrow funds, or otherwise "make some meaningful payment toward the settlement of the award
17 from *available assets or income*, even if he could not pay the full amount of the award." My family has been forced
18 to move from NJ to GA because of my lack of employment and ability to contribute to financial needs. I have been
19 unemployed since July 2019. I have no assets. I cannot borrow funds. I met every standard as required.

20 Hearing Officer McClain's decision states on page 4 (BATES 000473, 2020) that "Instead, the
21 evidence demonstrated that he had sufficient assets and income available to him to make a meaningful payment to
22 UBS." In fact, I have zero assets, savings or retirement funds. Any assets that I had have been exhausted during the
23 arbitration phase of this issues. At no point did/does the definition of "meaningful" get established by the Hearing
24 Officer.

25 Hearing Officer McClain's decision states on page 5 (BATES 000473, 2020) that " The SFC lists
26 sufficient assets and income, then, for Motherway to make a meaningful payment toward the Award. Indeed,
27 Motherway does not dispute this." In fact, this is a gross misrepresentation and I do dispute this, which was the
28 basis for my requesting a hearing based on FINRA 9554, inability-to-pay. If I could in anyway make a "meaningful

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1 payment” and continue my career I most certainly would. At no point did the Hearing Officer ask any question that
2 would substantiate such a representation by the Hearing Officer. This statement by the Hearing Officer could not be
3 more incorrect. It is pure speculation and baseless.

4 Hearing Officer McClain makes a leap of logic on page 7 (BATES 000473, 2020). He states, that
5 since my wife transferred monies from her bank account into mine and since we file a joint tax return; that
6 “suggesting that he and his wife regularly commingled assets”. As defined by Merriam-Webster, commingled: to
7 blend thoroughly into a harmonious whole or to combine into a common fund or stock. My wife and I have since
8 the day we were married on 2/20/2005, maintained separate investment, checking and savings accounts. To
9 “suggest” otherwise is wholly incorrect. The mere filing of a joint return does not represent any commingling. As
10 stated during the hearing, my wife sent me money to pay my credit card bills and other household bills. This,
11 further illustrates my inability-to-pay defense. Seemingly ignored by Hearing Officer McClain.

12 Hearing Officer McClain continues on page 7 (BATES 000473, 2020) of his decision to discuss
13 financial transactions that are specifically out of the scope of FINRA 9554 and my burden of proof. He cites
14 transfer of funds from my wife to myself. He also discusses the transfer and sale of a property in New Jersey. As
15 well as a purchase of a property in Georgia by my wife. All of these items are specifically outside of FINRA 9554
16 as they occurred prior to the date of the award. These are irrelevant to my burden of proof and should not have been
17 of consideration based on FINRA 9554.

18 Finally, Hearing Officer McClain states on page 8 (BATES 000473, 2020) of his decision, “In
19 short, Motherway offered no evidence at the hearing that his substantial household resources were truly unavailable
20 to him to make a meaningful payment toward the Award. He offered no evidence that he attempted to borrow funds
21 from his wife. Nor did he offer any evidence that she would refuse or be unable to provide him with that money.
22 This is fatal to his inability-to-pay defense.” In fact, I stated multiple times that I could not borrow the funds from
23 *anyone*. This *anyone*, would be any human including my wife. Hearing Officer McClain’s having ignored this
24 statement is no fault of mine and certainly not ‘fatal’, as I stated this several times during the hearing. Hearing
25 Officer McClain at no time asked me specifically if *anyone* either included or excluded my wife. My statement was
26 clear and *anyone* includes my wife.

27 The Statement of Financial Condition as required by FINRA demands disclosure of my spouse’s
28 assets and liabilities. At no point during disclosure of, or discussion of these assets did I state that these were subject
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1 to my enjoyment. As a point of fact, these assets are *not* subject to my enjoyment. Their mere existence does not
2 and should not infer rights as they are titled in her name and hers only.

3 I clearly satisfied my burden of proof in this matter. I have no income, no assets, no employment,
4 no ability to borrow, no ability to make a “meaningful payment”, no hidden assets, no discretionary income. As
5 required by FINRA 9554, my inability-to-pay defense should be affirmed. At no time has the FINRA Hearing
6 Officer disputed my ability to pay, clearly I have none. There are no hidden assets, no discretionary spending, no
7 funds in which I can draw from. Instead, he relied on the assets of my wife, who has refused to surrender those.
8 The Hearing Officer’s decision should be overturned. That is my request based on the information provided.

9 Dated this 2 of October, 2020.

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Daniel Motherway, pro se.
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