

**BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC**

In the Matter of the Application of

Derek Rudolf D'Alonzo

For Review of Action Taken by

Financial Industry Regulatory Authority

File No. 3-#####

**FINRA'S CORRECTED MOTION TO DISMISS NONCONFORMING APPLICATION
FOR REVIEW¹**

On October 21, 2021, FINRA's Office of Hearing Officers issued an Expedited Decision suspending Derek Rudolf D'Alonzo from associating with any FINRA member in any capacity because he failed to pay an arbitration award and did not prove that he had a bona fide inability to pay the award. Appendix A. Thereafter, on November 19, 2021, D'Alonzo emailed the Commission notice stating that he wished to appeal FINRA's action.² Appendix B. FINRA respectfully requests that the Commission dismiss D'Alonzo's appeal without prejudice because it does not conform to the Commission's Rules of Practice.

Rule 420 of the Commission's Rules of Practice requires that a person aggrieved by FINRA action file an application for review with the Commission pursuant to Commission Rule

¹ This motion corrects a motion to dismiss that FINRA filed on November 30, 2021, which inadvertently included in Appendix B to the motion documents containing sensitive personal information that the respondent attached to the email that is also included in Appendix B. Those documents have been excluded from this corrected filing.

² D'Alonzo emailed the notice of appeal to the Commission using the mailbox apfilings@sec.gov, and he copied FINRA on that email.

of Practice 151.³ *See id.* Rule 151 requires that the application for review be filed with the Commission electronically in accordance with Rule 152(a) of the Commission's Rules of Practice and be accompanied by a certificate of service. *See* 17 CFR § 201.151(a), (d). Rule 152 further requires that an application for review be filed in paper form, with pages, electronic or otherwise, measuring 8 1/2 x 11 inches, using 12 point or larger typeface, including a header or title page, and reflecting separately paginated, double-spaced pages. *See* 17 CFR § 201.152(b). Finally, the application for review must be signed by the applicant as provided in Commission Rule of Practice 153. *See* 17 CFR § 201.152(c).

The email constituting D'Alonzo's notice of appeal failed to conform to any of the foregoing requirements for filing an application for review of FINRA action. Among other deficiencies, D'Alonzo's notice of appeal does not set forth the errors that he alleges resulted in FINRA's determination to suspend him, it was not filed electronically in accordance with Rule 152, it was not accompanied by a certificate of service, it is not in paper form, electronic or otherwise, and it is not signed by D'Alonzo.⁴

Accordingly, FINRA requests that the Commission dismiss D'Alonzo's appeal without prejudice, and it asks that the Commission direct that D'Alonzo may file an application for review that conforms to the requirements of the Commission's Rules of Practice within a reasonable period as determined by the Commission.⁵

³ Among other things, the application for review must identify the FINRA determination complained of and set forth in summary form a brief statement of the alleged errors in the determination and supporting reasons therefor. *See* 17 CFR § 201.420(c).

⁴ By letter dated November 30, 2021, FINRA informed D'Alonzo that it did not believe that his appeal was filed properly with the Commission, and it provided him with instructions to file his application for review using the Commission's eFAP filing system. Appendix C.

⁵ FINRA also requests that the Commission stay, until such time that D'Alonzo files a compliant application for review, the running of FINRA's obligation to certify and file with the

Respectfully submitted,

/s/ Gary Dernelle

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Dated: December 1, 2021

Commission a copy of the record of the action about which D'Alonzo ostensibly complains. *See* 17 CFR § 201.420(e).

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FINRA'S INDEX TO APPENDIX

<u>Appendix</u>	<u>Description</u>
A	FINRA's Office of Hearing Officers Decision in <i>Derek Rudolf D'Alonzo</i> , Dated October 21, 2021
B	D'Alonzo Email, Dated November 19, 2021
C	FINRA's Letter Re: Application for Review, Dated November 30, 2021

APPENDIX A

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DEREK RUDOLF D'ALONZO
(CRD No. 2099610),

Respondent.

Expedited Proceeding
No. ARB210010

STAR No. 20210712356

Hearing Officer—MC

EXPEDITED DECISION

October 21, 2021

Respondent failed to pay an arbitration award and failed to prove that he had a bona fide inability to pay or make a meaningful payment toward the award. Respondent is therefore suspended from associating with any FINRA member in any capacity.

Appearances

For the Complainant: Nicholas Jablonski, Esq., and Loyd Gattis, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Derek Rudolf D'Alonzo, pro se

DECISION

I. Introduction

Respondent Derek Rudolf D'Alonzo did not pay a FINRA arbitration award entered against him in favor of his former employer firm, SunTrust Investment Services, Inc. ("SunTrust"). Consequently, FINRA sent D'Alonzo a notice of suspension pursuant to FINRA Rule 9554, informing him that he would be suspended from associating with any FINRA member firm unless he paid the award or requested a hearing. D'Alonzo requested a hearing and asserted the defense that he was financially unable to pay the award. The request stayed the effective date of the suspension. On August 4, 2021, I held a hearing by videoconference.

The evidence and testimony presented at the hearing did not support D'Alonzo's defense. He did not establish that, after the award was issued, he was unable to either pay or make a meaningful payment towards satisfying the award. D'Alonzo is therefore suspended from associating with any FINRA member firm in any capacity.

II. Findings of Fact and Conclusions of Law

A. Regulatory Framework

FINRA's Code of Arbitration Procedure for Industry Disputes requires that an associated person must pay an award issued by an arbitration panel within 30 days after the person receives notice of the award.¹ When an associated person does not pay the award, FINRA Rule 9554 authorizes an expedited process by which FINRA may send the person a notice stating that failing to comply within 21 days of being served with the notice will result in suspension from associating with any member.² The suspension takes effect unless the associated person requests a hearing, which stays the effective date of the suspension.³ The hearing request must specifically identify any defenses the person is relying on.⁴ FINRA may not suspend the associated person if a timely motion to vacate or modify the award has been filed in a court with jurisdiction over the matter, unless the motion has been denied.⁵

B. Background

1. Jurisdiction

On January 25, 2015, D'Alonzo registered with FINRA through SunTrust, where he was employed until June 7, 2017. According to an entry in D'Alonzo's Central Registration Depository record, on June 7, SunTrust terminated his employment for violating the firm's code of conduct.⁶ Currently, D'Alonzo is employed by and registered with FINRA through another member firm.⁷ Since FINRA initiated this action against D'Alonzo within two years of the issuance of the award, FINRA has jurisdiction over him for the purposes of this proceeding.⁸

2. The Award and Notice of Suspension

On March 4, 2021, a FINRA Dispute Resolution Services arbitration panel entered an arbitration award against D'Alonzo in the matter of *Derek Rudolf D'Alonzo vs. SunTrust Investment Services, Inc.*, in the amount of \$146,045.75.⁹ That same day, FINRA Dispute

¹ FINRA Rule 13904(j).

² FINRA Rule 9554(a).

³ FINRA Rule 9554(d).

⁴ FINRA Rule 9554(e).

⁵ FINRA By-Laws, Article VI, Section 3(b).

⁶ Joint Exhibit ("JX-") 1, at 5.

⁷ *Id.* at 4.

⁸ FINRA By-Laws, Article V, Section 4(b).

⁹ Stipulations ("Stip.") ¶ 2.

Resolution Services informed D’Alonzo that, unless he filed a motion in court to vacate the award, he had to pay it in full within 30 days, or no later than April 5.¹⁰

Consequently, on April 23, 2021, FINRA notified D’Alonzo that, pursuant to Rule 9554, his association with FINRA would be suspended on May 14, 2021, unless he could demonstrate that he had taken one of several actions.¹¹ Those actions, recognized by FINRA as defenses to a Rule 9554 notice of suspension, are: (1) make full payment of the award; (2) reach a written settlement agreement with SunTrust and meet his obligations under the agreement; (3) file a motion to vacate or modify the award that has not been denied; or (4) file a petition in bankruptcy court, which is either pending or has resulted in discharge of the award.¹² The Notice informed D’Alonzo of his right to request a hearing by asserting one of these defenses, or assert the defense that he is financially unable to pay the award.¹³ FINRA properly served the notice of suspension on D’Alonzo.¹⁴

C. The Inability to Pay Defense

Respondents served with a suspension notice may claim financial inability to pay the award as a defense, so long as the award is not payable to a public customer.¹⁵ Respondents asserting this defense have the burden of proof, and must document fully their financial circumstances.¹⁶ This is because their financial circumstances, including the scope of their assets and liabilities, are “peculiarly within [their] knowledge.”¹⁷ To satisfy their burden of proof, therefore, respondents must show that since the issuance of the award, they have been “unable to make some meaningful payment toward the award from available assets or income” by reducing their expenses, borrowing funds, or selling assets, even when unable to pay the full amount.¹⁸

¹⁰ JX-3; Stip. ¶ 3.

¹¹ JX-5.

¹² FINRA By-Laws, Art. VI, Sec. 3(b); NASD Notice to Members 00-55, at 2 (Aug. 2000), <http://www.finra.org/rules-guidance/notices/00-55>.

¹³ JX-5.

¹⁴ Stip. ¶ 7.

¹⁵ SR-FINRA-2010-014, Order Approving Proposed Rule Change Relating to FINRA Rule 9554, Exchange Act Release No. 62211, 75 Fed. Reg. 32525 (June 8, 2010) (approving change to FINRA Rule 9554 making the defense of inability to pay an arbitration award unavailable to a respondent when the award is issued in favor of public customers).

¹⁶ *Robert Tretiak*, Exchange Act Release No. 47534, 2003 SEC LEXIS 653, at *17 n.16 (Mar. 19, 2003).

¹⁷ *Bruce M. Zipper*, Exchange Act Release No. 33376, 1993 SEC LEXIS 3525, at *8 (Dec. 23, 1993).

¹⁸ *Michael Albert DiPietro*, Exchange Act Release No. 77398, 2016 SEC LEXIS 1036, at *16 n.22 (Mar. 17, 2016) (quoting *Dep’t of Enforcement v. Respondent*, No. ARB010032, at 3 (Mar. 15, 2002) (redacted), http://www.finra.org/sites/default/files/OHODDecision/p006652_0_0.pdf).

The defense may fail if there is insufficient or incomplete evidence of a respondent's financial condition.¹⁹

D. Pre-Hearing Issues

D'Alonzo filed a request for hearing and asserted that he was financially unable to pay the award as his defense.²⁰ Representing himself, he stipulated that he has not paid any portion of the award, entered into a settlement agreement with SunTrust, or filed for bankruptcy protection.²¹ He also stipulated that he had not filed a pending motion to vacate the award.²² The hearing in this expedited proceeding was initially scheduled for July 15, 2021, with a pre-hearing conference set on July 13. However, at the pre-hearing conference, both parties requested a postponement, for different reasons.

D'Alonzo based his request on a claim, contrary to the stipulation filed by the parties, that on April 5, 2021, the attorney representing him in the underlying arbitration proceeding had filed a motion to vacate the award in the Superior Court of Fulton County, State of Georgia, which should result in the dismissal of this proceeding. However, according to D'Alonzo, his attorney told him that there was a question as to whether the Court acknowledged receiving the motion. As a result, D'Alonzo stated that his attorney needed additional time to verify that the Court had timely received and filed the motion.²³

Enforcement confirmed that D'Alonzo had sent it a copy of the motion, but the motion was not file-stamped by the Court so there was no indication that the Court had received it within the prescribed time frame.²⁴ Without proof that the motion had been filed within three months of the issuance of the award, it would be moot, and Enforcement would not agree to a dismissal of this proceeding.²⁵

Enforcement did not oppose D'Alonzo's postponement request and also asked for a postponement, because of a "discovery issue." According to Enforcement, despite repeated requests, D'Alonzo had not provided essential documentation relating to his inability-to-pay

¹⁹ *William J. Gallagher*, Exchange Act Release No. 47501, 2003 SEC LEXIS 599, at *9-11 (Mar. 14, 2003).

²⁰ Stip. ¶ 8.

²¹ Stip. ¶¶ 9 – 11.

²² Stip. ¶ 12.

²³ Transcript of Pre-Hearing Conference (PHC Tr.) 4-8.

²⁴ PHC Tr. 6; Supplemental Exhibit A, at 8-14.

²⁵ PHC Tr. 8-9. After the hearing, Enforcement obtained a copy of a state court order denying the motion to vacate as untimely filed. Supplemental Exhibit C, at 5-7.

defense. Enforcement needed the documents to enable it to evaluate his ability to pay the award.²⁶ D’Alonzo stated he would provide the information to Enforcement.²⁷

Based on these representations, the hearing was postponed until August 4, 2021.

E. The Hearing

At the hearing, Enforcement argued that D’Alonzo’s defense fails on three grounds: (1) despite multiple requests and the continuance of the hearing date, D’Alonzo has not provided full and complete documentation of his financial condition as required; (2) the available evidence shows he has sufficient net worth to make a meaningful payment toward the award; and (3) since the award was issued, D’Alonzo has had sufficient income as well as the ability to reduce his living expenses and/or divert funds to make a meaningful payment.²⁸

D’Alonzo claimed that his lawyer was still awaiting a court ruling confirming that he filed a timely motion to vacate the award, but he offered no documentation of the status of the lawyer’s efforts to obtain the ruling or when it might occur.²⁹

D’Alonzo insisted that he is unable to pay the award. He claimed to have no savings and no investments, asserting that “because of SunTrust I have nothing, zero.”³⁰ He referred to substantial debts and said that he lives from month-to-month supporting a household with a family of six, including three daughters in college, and that he has “zero assets” to pay the award.³¹

1. Respondent’s Statement of Financial Condition

The Case Management and Scheduling Order (“CMSO”) issued in this proceeding clearly informed D’Alonzo that he was “required to complete and provide to the Department of Enforcement a Statement of Financial Condition form” (“Statement”) by May 14, 2021, and produce documents supporting his defense at Enforcement’s request. The CMSO expressly warned him that failure to complete the form and provide further information on request could be deemed to be an abandonment of his defense and result in a summary suspension of his FINRA licenses. The CMSO provided D’Alonzo with a blank Statement to complete and send to Enforcement.

²⁶ PHC Tr. 9-11.

²⁷ PHC Tr. 12-14.

²⁸ Hearing Transcript (“Tr.”) 10.

²⁹ Tr. 18.

³⁰ Tr. 19-20.

³¹ Tr. 21-22, 29.

Enforcement notified D’Alonzo by email on May 17, 2021, that he had missed the CMSO’s deadline for providing the Statement and the required supporting documents. Enforcement offered to agree to a “reasonable extension” of the deadline and asked D’Alonzo to call to discuss the matter.³²

On May 28, 2021 D’Alonzo submitted the Statement. Because it contained numerous omissions of required information about D’Alonzo’s financial condition, on June 10, Enforcement sent him another request, with a detailed list specifying exactly what information he needed to provide.³³ D’Alonzo responded with an email on June 14 that contained his first supplemental response to Enforcement’s request for additional information.³⁴

The next day, Enforcement gave D’Alonzo what it characterizes as its “First Email Notification of Incomplete Production”³⁵ informing him that, despite his response, it had “not yet received all” of the required “materials and information.”³⁶ D’Alonzo replied on June 21 with a second supplemental response.³⁷ It, too, was lacking, and on June 23, Enforcement notified D’Alonzo that it was still waiting for him to send documents and information it had requested. Enforcement asked “[w]hen can we expect a complete response . . . [with] all the required information and documents?”³⁸ On June 27, D’Alonzo submitted an additional response.³⁹

On July 1, after reviewing his response, Enforcement issued its third notice informing D’Alonzo that his Statement was still incomplete, with “multiple deficiencies.” With this notice Enforcement included another detailed, comprehensive list explaining what information was still lacking from D’Alonzo’s submissions. The missing information included: (1) credit card statements for the past year; (2) details of his 2019 and 2020 state and federal tax obligations; (3) an explanation of the discrepancy between his claim that his income for 2021 was \$35,700 and deposits to his bank account totaling \$81,286; (4) a description of sources of income for other members of his household; (5) documentation of claimed educational expenses; and (6) documentation of any outstanding loans.⁴⁰

³² CX-1.

³³ CX-2.

³⁴ JX-9.

³⁵ Complainant’s Exhibit List; Tr. 12.

³⁶ CX-3.

³⁷ JX-10.

³⁸ CX-4.

³⁹ CX-5.

⁴⁰ JX-17.

D'Alonzo's inadequate submissions frustrated Enforcement's efforts to ascertain whether he was, as he claims, unable to make a meaningful payment towards the award. A prime example is the question of whether he was able to borrow against the equity in his home.

2. Respondent's Present Financial Condition

a. Home Equity

D'Alonzo's house had an appraised value in 2020 of \$388,000 and a mortgage, as of May 2021, of \$241,162, leaving him with equity of approximately \$147,000.⁴¹ He stipulated that of that amount, there was approximately \$69,000 available to borrow.⁴²

In its June 10, 2021 email, Enforcement asked D'Alonzo if he had tried to borrow funds to pay any portion of the award, and specifically if he had tried to borrow against the equity in his home.⁴³ D'Alonzo's only response was, "Tried to get equity line but debt/equity ratio to (sic) high. Could not get a loan."⁴⁴

On July 11, 2021, Enforcement sent D'Alonzo an email "following up once more" with questions seeking details about "deficiencies" in his Statement and specifically about his efforts to obtain an equity line of credit. Enforcement asked D'Alonzo to identify the lenders he had contacted for an equity loan, the dates, the amounts he tried to borrow, and copies of the applications, responses, and other documents evidencing any attempts to borrow.⁴⁵ That same day, D'Alonzo replied by email that he was out of town meeting with clients but had "all those documents at home" and would "get them" when he returned.⁴⁶ Then on July 12, D'Alonzo sent another email reply to Enforcement's July 11 questions. Regarding his efforts to obtain an equity loan, he wrote "Milandand loan depot for refi. Debt to equity to (sic) high and would not do loan. You have the same docs I sent to them." He provided no details or documentation.⁴⁷

At the Pre-Hearing Conference on July 13, Enforcement described its unsuccessful effort to obtain the details from D'Alonzo. He claimed in response that he was "more than happy to send" the information.⁴⁸ A week later, Enforcement again emailed D'Alonzo reminding him that he still had not sent details about any equity loan applications. Enforcement also pointed out that D'Alonzo had not produced any evidence confirming he had properly filed a motion to vacate in

⁴¹ JX-13, at 7; Stip. ¶ 15.

⁴² Tr. 38-39; Stip. ¶ 15; JX-13.

⁴³ CX-2, at 2-3.

⁴⁴ CX-5, at 1.

⁴⁵ CX-7, at 1.

⁴⁶ CX-8, at 1.

⁴⁷ CX-9, at 1. At the hearing, D'Alonzo said "Milandand loan depot" was a reference to two companies: Midland and Loan Depot. Tr. 46.

⁴⁸ PHC Tr. 13.

court and that he had not turned over credit card statements or other documents needed to complete his Statement.⁴⁹

At the hearing, D'Alonzo admitted that he had not sent the requested information, that he had not provided any applications for an equity loan, correspondence with any lenders, notices of rejections by lenders, dates of applications, nor had he made any effort to obtain a home equity loan since 2020, well before the award was issued.⁵⁰ D'Alonzo then argued that it would be fruitless to try, and that "it is a mute (sic) point because I can't get any equity." Even if he were able to obtain a loan, he testified, the money would not go to SunTrust. It would go to the Internal Revenue Service to pay back taxes, he claimed, because "[t]hey have precedence over anybody."⁵¹

b. Cars and Boat

D'Alonzo testified at the hearing that he owned five vehicles.⁵² However, prior to the hearing, he told Enforcement he owned six. At that time, D'Alonzo provided Enforcement with CarMax valuations, dated June 14, 2021, for each of the six vehicles. The valuations were for a 2012 Honda Accord; a 2013 Ford Fusion; a 2006 Infiniti M35; a 2006 Lexus ES 330; a 2011 Hyundai Sonata; and a 2012 Chevrolet Suburban. Together, the valuations totaled approximately \$34,000, characterized by the CarMax document as an "Offer" to pay those amounts to D'Alonzo, "Valid through 6/21/2021."⁵³ D'Alonzo testified that because his Infiniti, valued at \$2,200, was recently destroyed in an accident, he now owns five cars, valued at \$31,800.⁵⁴

D'Alonzo also owns a boat, which he stipulated is worth between \$22,510 and \$25,740.⁵⁵ As of May 18, 2021, he owed \$13,609 for a loan secured by the boat,⁵⁶ leaving him with equity of approximately \$8,800. The valuations of the five cars, combined with D'Alonzo's equity in the boat, come to slightly more than \$40,000.

D'Alonzo testified that his five cars are paid for, but they are old, and he cannot sell any of them because of his family needs them for transportation.⁵⁷ D'Alonzo is married and has four

⁴⁹ CX-10.

⁵⁰ Tr. 49-51.

⁵¹ Tr. 51-52.

⁵² Tr. 52.

⁵³ JX-15.

⁵⁴ Tr. 54-55.

⁵⁵ Stip. ¶ 16.

⁵⁶ JX-16.

⁵⁷ Tr. 19.

daughters, all age eighteen or older, three in college and living with him, all of whom he supports.⁵⁸

c. Net Worth

According to the calculations reflected in D'Alonzo's Statement, as of May 28, 2021, his assets totaled \$474,200, his liabilities came to \$438,200, leaving him with a net worth of \$36,000.⁵⁹

In addition to the cars and boat, D'Alonzo's list of assets includes \$388,000 in real estate and \$25,000 in furniture and household goods. The list includes \$10,000 in cash;⁶⁰ yet the bank statement for his checking account showed a balance of \$12,995 on May 28.⁶¹ A month earlier, on April 28, he had a balance of more than \$25,700 in his bank account.⁶²

D'Alonzo's listed liabilities include a mortgage of \$240,000 and real estate taxes of \$4,400. He testified, however, that his mortgage lender maintains an escrow account for real estate taxes he pays through his monthly mortgage payments.⁶³ His mortgage account statement for May 2021 shows an escrow balance of \$3,941.⁶⁴ He did not include this in his list of assets.⁶⁵

Other liabilities D'Alonzo listed on the Statement include the boat loan of \$13,600, \$55,000 in taxes, credit card debts of \$50,200, and other loans of \$75,000.⁶⁶ The tax liability represents what D'Alonzo owes federal and state tax authorities for past due taxes. He makes monthly installment payments in accordance with a payment plan he reached with the authorities, with which he is current.⁶⁷

The \$75,000 in loans, he testified, represents a series of interest-free loans given him by his father beginning in March or April 2020 and continuing through April of this year. He has not made any repayments. According to D'Alonzo, he has 25 years to repay the loans, with the first payment due sometime in September 2021.⁶⁸

⁵⁸ Tr. 19, 21-22.

⁵⁹ JX-8, at 1-2.

⁶⁰ JX-8, at 1.

⁶¹ Tr. 34-35; JX-14, at 710.

⁶² Stip. ¶ 14.

⁶³ Tr. 66-67

⁶⁴ JX-12.

⁶⁵ Tr. 67.

⁶⁶ JX-8, at 2.

⁶⁷ Tr. 59.

⁶⁸ Tr. 59-60, 65.

D'Alonzo testified that has not asked his father to lend him funds to pay part of the award; he borrowed the money "to pay bills," not "for any other reason."⁶⁹ He testified that his father loaned him the money as a "bridge" to help him "survive" when he received no paychecks from October 2020 through end of April 2021, and that the loans were "for nothing else."⁷⁰

d. Income and Expenses

i. Income

D'Alonzo's sole entry on the Statement page for his monthly income states that he receives \$10,000 a month.⁷¹

However, in the six weeks following the issuance of the award, he deposited \$16,500 into his checking account.⁷² And in the first five months of 2021, he deposited more than \$94,000 into his checking account, averaging approximately \$19,000 per month.⁷³ When asked to explain where the funds came from, he testified that it was all loaned by his father.⁷⁴ However, the \$75,000 entry in the Statement for "Other Loans or Notes Payable" gives no indication of the source.⁷⁵ And his checking account statement does not disclose the sources of the deposits to the account.

D'Alonzo testified that he has, since the award, also received approximately \$8,300 in federal stimulus funds, and \$4,200 that he testified "the girls got."⁷⁶ He disclosed neither of these in the Statement.

ii. Expenses

On the Statement page for listing monthly "Expenses/Disbursements," D'Alonzo entered figures for mortgage, real estate taxes, food, utilities, payments on loans, insurance premiums, medical expenses, automobile expenses, and education expenses. They total \$8,055,⁷⁷ or \$1,945 less than his stated monthly income.

⁶⁹ Tr. 66.

⁷⁰ Tr. 102-03.

⁷¹ Tr. 67; JX-8, at 4.

⁷² JX-14, at 449 (\$5,000 deposit March 15, 2021); 557 (\$2,500 deposit April 6); 576 (\$7,000 deposit April 19); 586 (\$2,000 deposit April 26).

⁷³ Tr. 67-68.

⁷⁴ Tr. 68-69.

⁷⁵ JX-8, at 2.

⁷⁶ Tr. 70.

⁷⁷ JX-8, at 5.

D'Alonzo's entries of expenses in the Statement and his answers to questions Enforcement asked for clarification are confusing. In the Statement, D'Alonzo entered \$1,885 for "Payment on Loans" for credit cards.⁷⁸ When Enforcement asked him to break down the \$1,885 entry, he wrote that it includes medical expenses and \$750 for rent for his daughter in college; in a separate written answer he stated that the monthly college payment is \$800.⁷⁹ At the hearing, he testified that he made a mistake when he wrote that the \$1,885 includes medical expenses.⁸⁰ He then testified that the \$1,885 "should be credit cards by itself," and does not include medical expenses, but that it "doesn't matter" because it "has got no bearing on paying anything."⁸¹

D'Alonzo testified that he pays the minimum allowable payment on the credit cards monthly.⁸² But he submitted credit card statements for only the most recent month,⁸³ frustrating any attempt to see what all the monthly minimum payments are and to verify that he is not using them to make discretionary purchases.

Addressing discretionary expenses, D'Alonzo testified that a May 2021 restaurant charge of \$1,685 was for the wedding of his youngest daughter, who, he said, just moved out of his home.⁸⁴ However, in a written response to Enforcement dated June 27, 2021, he listed her as one of the three daughters still living at home.⁸⁵ Another expense, not listed in the Statement but reflected in his bank statements, is a \$1,000 annual rental fee he pays to a marina for his boat.⁸⁶

F. Respondent Failed to Establish an Inability to Make a Meaningful Contribution Toward Satisfying the Award

As the record of the hearing reflects, D'Alonzo did not satisfy the burden of proof to establish his defense. The evidence presented did not show that, since the award was issued, D'Alonzo has been unable to make a meaningful contribution toward the award either by

⁷⁸ JX-8, at 5.

⁷⁹ CX-6, at 4.

⁸⁰ Tr. 75.

⁸¹ Tr. 78.

⁸² Tr. 58.

⁸³ Tr. 58-59.

⁸⁴ Tr. 79-80.

⁸⁵ CX-5, at 3.

⁸⁶ Tr. 80-81.

reducing other expenditures, borrowing funds,⁸⁷ or realizing funds from current income or available assets.⁸⁸

First, he did not produce a complete Statement of Financial Condition, and, as noted above, that alone is sufficient to cause his defense to fail.⁸⁹ His May 28, 2021 Statement is woefully incomplete. Despite numerous requests from Enforcement that he supplement it, D’Alonzo never filled in the gaps. He did not document any efforts to borrow against the \$69,000 equity in his home. He simply stated that if he applied, he would be rejected. He may be correct, but without producing documents showing an application and rejection, there is no way to confirm that he could not obtain an equity line of credit to make a meaningful contribution toward paying the award.

D’Alonzo further justifies his refusal to apply for an equity loan by contending that even if he were to obtain one, he would not use the funds to pay SunTrust because he believes other debts—taxes and credit cards, for example— should take precedence. But he is current on his schedule for repaying back taxes, and he is current on making minimum payments to defray his credit card debts. His reported monthly income exceeds his monthly expenses, he has received significant cash supplements to his reported income, and he has assets in which he has equity available. Rather than establishing an inability to pay, the evidence suggests that D’Alonzo is choosing not to make any meaningful payment to pay down what he owes. This is impermissible.⁹⁰

Second, D’Alonzo did not show that he has insufficient net worth to allow him to liquidate some assets or redirect some cash to make a meaningful payment towards the award. On his Statement, he represented his net worth to be \$36,000. As discussed above, he has \$69,000 in equity in his house. The June 2021 CarMax valuation for the five cars he still possesses was approximately \$31,800, and the equity in his boat is approximately \$22,000, for a total of \$53,800. Without giving up any of his cars, he could realize approximately \$22,000 for his boat, and could redirect the \$1,000 annual marina fee that he would no longer need to pay.

When asked why he had not considered selling the boat to be able to make a payment toward the award, D’Alonzo’s answer was that if he sold it and realized, he hypothesized, \$10,000, “Why would I pay SunTrust?” He stated, “I’ve got other obligations” including credit

⁸⁷ *Dep’t of Enforcement v. Motherway*, 2020 FINRA Discip. LEXIS 39, at *4 (OHO June 30, 2020), *appeal docketed*, No. 3-19897 (SEC July 29, 2020); *Regulatory Operations v. Fannin*, No. ARB170007, at 12 (OHO Aug. 25, 2017), https://www.finra.org/sites/default/files/OHO_Fannin_ARB170007_082517.pdf (inability-to-pay defense fails when respondent does not present “evidence of any attempt to borrow funds” to satisfy an award).

⁸⁸ *DiPietro*, 2016 SEC LEXIS 1036, at *16.

⁸⁹ *Gallagher*, 2003 SEC LEXIS 599, at *9-11.

⁹⁰ *DiPietro*, 2016 SEC LEXIS 1036, at *19 (inability-to-pay defense fails when failure to pay is based on choosing to pay discretionary expenses).

card debts, back taxes, and a loan from his father.⁹¹ However, there is no evidence supporting his implied argument that he would be unable to apply proceeds from a sale of his boat to defray the award. Revealingly, he argued that if he were to realize equity in his boat, it “is still not going to SunTrust,” which “stole my business and then accused me falsely.”⁹²

Third, D’Alonzo failed to establish that he had insufficient income or was unable to divert funds to make a meaningful payment. As Enforcement argues, in the months following the issuance of the award, D’Alonzo had substantially more cash in his checking account than the \$10,000 he represented in his Statement. Although he repeatedly asserted at the hearing that he has “zero assets” to contribute to a payment to defray the award, the record belies him. His estimate of \$8,000 in monthly expenses is approximately \$2,000 less than his stated monthly income, and he also received a stimulus check for more than \$8,000 that he did not include in his original Statement. D’Alonzo did not establish that he was unable to divert available cash, that he did not “have it in any form or fashion,” and that he had “zero” ability⁹³ to make a meaningful payment to reduce the award.

III. Conclusion

Based on the testimony and evidence presented at the hearing, including an assessment of the credibility of Respondent’s assertions based on his demeanor, the substance of his testimony and the documented proof of his income and assets, I find that D’Alonzo failed to substantiate that he had an actual inability to make some meaningful contribution toward honoring the award issued against him. The arbitration system fulfills an important role in FINRA’s mission, and honoring its awards is “essential to the functioning of the [FINRA] arbitration system.”⁹⁴

FINRA issued D’Alonzo a notice of suspension under FINRA Rule 9554 in April 2021, for failure to pay the arbitration award issued against him. FINRA Rule 9559(n) permits a Hearing Officer wide discretion to, among other things, “approve, modify or withdraw . . . sanctions . . . imposed by the notice” and to impose costs. A conditional suspension will provide D’Alonzo with an incentive to pay the award underlying this proceeding,⁹⁵ an obligation that comes with FINRA registration.

IV. Order

Therefore, pursuant to Article VI, Section 3(b) of FINRA’s By-Laws, and FINRA Rule 9559(n), D’Alonzo is suspended from associating with any FINRA member firm in any capacity,

⁹¹ Tr. 94-95.

⁹² Tr. 22-23.


⁹³ Tr. 95.

⁹⁴ *Michael David Schwartz*, Exchange Act Release No. 81784, 2017 SEC LEXIS 3111, at *18 (Sept. 29, 2017) (quoting *Gallagher*, 2003 SEC LEXIS 599, at *13).

⁹⁵ *Schwartz*, 2017 SEC LEXIS 3111, at *18.

effective upon the issuance of this Decision. The suspension is to remain in effect until D'Alonzo produces sufficient documentary evidence to FINRA that: (1) he has paid the award in full; (2) he and SunTrust have agreed to settle the matter, and he is current in fulfilling his obligations under the terms of the settlement; or (3) he has filed a petition in a United States Bankruptcy Court, or the Court has discharged the debt representing the award. Upon making such a showing, the suspension will automatically terminate.

D'Alonzo is also **ORDERED** to pay FINRA's costs of \$1,757.92.⁹⁶ which include an administrative fee of \$750 and the hearing transcript fee of \$1,007.92. These costs are due and payable upon the issuance of this Decision.⁹⁷


Matthew Campbell
Hearing Officer

Copies to:

Derek Rudolf D'Alonzo (via email, overnight courier, and first-class mail)
Nicholas Jablonski, Esq. (via email)
Loyd Gattis, Esq. (via email)
Jennifer L. Crawford, Esq. (via email)

⁹⁶ D'Alonzo must pay the costs of the hearing before the suspension terminates.

⁹⁷ I considered and rejected without discussion all other arguments by the parties.

APPENDIX B

Subject: FW: STAR no. 20210712356
Attachments: financial package.pdf; may statement.pdf; july statement.pdf; june statement.pdf; aug statement.pdf; sept statement.pdf; oct statement.pdf

-----Original Message-----

From: Derek D'Alonzo [REDACTED]
Sent: Friday, November 19, 2021 10:51 PM
To: APFILINGS@SEC.GOV
Cc: nac casefilings <nac.casefilings@finra.org>; Lawhead, Alan <Alan.Lawhead@finra.org>
Subject: STAR no. 20210712356

EXTERNAL: Verify sender before opening attachments or links.

This email is to appeal the decision made by finra for the case# 20210712356. There is no way I can pay the award given to suntrust. I live pay check to paycheck that doesn't last between my pay. I am a family of 5 with 3 kids in college. I am a 1 income family that has only one checking account. I have no investments, no IRA's or 401ks, Have no medical insurance and no insurance. FINRA has suspended my license which makes absolutely no sense. They have made my financial situation worse. I have been licensed in this industry for over 28 years. I have never violated any securities laws or been fined. To have my license suspended for a debt is very troublesome. Even if I liquidated every asset I have I would not come close to paying off all my debt. Sunburst stole 80% of my business based on false accusations. I have enclosed everything I own along with my current debt.

APPENDIX C



Gary Dernelle
Associate General Counsel

Direct: (202) 728-8255
Fax: (202) 728-8264

November 30, 2021

VIA EMAIL

Derek Rudolf D'Alonzo

[REDACTED]
[REDACTED]
[REDACTED]

RE: In the Matter of the Application for Review of Derek Rudolf D'Alonzo; FINRA Expedited Proceeding No. ARB210010

Mr. D'Alonzo:

FINRA is in receipt of an email that you sent to the U.S. Securities and Exchange Commission ("SEC") on November 19, 2021, in which you state that you seek to appeal FINRA's Expedited Decision in the aforementioned matter. Please be advised that we do not believe that your email, which was sent to the mailbox apfiling@sec.gov, was received by the SEC.

Effective April 12, 2021, the SEC's Rules of Practice (17 CFR §§ 201.100 – 201.1106) require the electronic filing and service of documents in SEC administrative proceedings. See Amendments to the Commission's Rules of Practice, 85 Fed. Reg. 86,464 (Dec. 30, 2020) (available at <https://www.govinfo.gov/content/pkg/FR-2020-12-30/pdf/2020-25747.pdf>). The SEC's instructions for electronic filing are available on the SEC's website at <http://www.sec.gov/about/rulesofpractice.shtml>. The SEC's electronic filing system ("eFAP") is available at <https://www.sec.gov/efap>.

The SEC's instructions for electronic filing also require that parties and representatives serve and accept service of documents electronically. To avail yourself of the opportunity to appeal the FINRA's Expedited Decision to the SEC, we request that you serve a copy of the application for review, and copies of any documents you may file in support of the application for review, on FINRA electronically at gary.dernelle@finra.org. We consent to accept electronic service of your appeal on behalf of FINRA at this email address.

Please also be advised that if you file an application for review with the SEC, the application must identify the FINRA case number and state the basis for your appeal. You must provide information about where you may be served and a phone number where you may be reached during business hours. If your address or phone number changes, you must advise the SEC and FINRA. Attorneys must file a notice of appearance.

Derek Rudolf D'Alonzo

November 30, 2021

Page -2-

Finally, any application for review must be in paginated form, be signed, and be accompanied by a certificate of service. Further information concerning the SEC's Rules of Practice and the requirements for filing a valid application for review are available on the SEC's website at <https://www.ecfr.gov/current/title-17/chapter-II/part-201>.

Applications for review of FINRA action are addressed in Rule 420 of the Commission's Rules of Practice.

Sincerely,

/s/ Gary Dernelle

Gary Dernelle

CERTIFICATE OF SERVICE

I, Gary Dernelle, certify that on this 1st day of December 2021, I caused FINRA's Corrected Motion to Dismiss Nonconforming Application for Review, in the Matter of the Application of Derek Rudolf D'Alonzo, Administrative Proceeding No. 3-#####, to be filed through the SEC's eFAP system on:

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

and served by electronic mail on:

Derek Rudolf D'Alonzo (CRD Address)



Respectfully submitted,

/s/ Gary Dernelle

Gary Dernelle
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gary.dernelle@finra.org
nac.casefilings@finra.org

CERTIFICATE OF COMPLIANCE

I, Gary Dernelle, certify that FINRA's Corrected Motion to Dismiss Nonconforming Application for Review complies with the Commission's Rules of Practice by omitting or redacting any sensitive personal information described in Rule of Practice 151(e).

Respectfully submitted,

/s/ Gary Dernelle

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Dated: December 1, 2021