

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

In the Matter of the Application of

Michael Ciro Colletti

For Review of Disciplinary Action Taken by

FINRA

File No. 3-22491

**FINRA'S OPPOSITION TO COLLETTI'S MOTION FOR REMAND OR,  
ALTERNATIVELY, TO ADDUCE ADDITIONAL EVIDENCE**

Michael Garawski  
Senior Vice President and  
Director – Appellate Group

Andrew Love  
Associate General Counsel

Celia L. Passaro  
Associate General Counsel

FINRA  
1700 K Street, NW  
Washington, DC 20006  
(202) 728-8985  
ersilia.passaro@finra.org  
nac.casefilings@finra.org

September 15, 2025

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File No. 3-22491

**I. INTRODUCTION**

Michael Colletti has filed a motion requesting two forms of relief from the Commission. First, he requests that the Commission remand this matter to FINRA for development of the record concerning Colletti's claim that he is unable to pay the monetary sanctions imposed by FINRA. The Commission should deny this requested relief, as Colletti waived this argument by failing to meet his burden of proving it in the proceedings before FINRA.

The initial order in the proceedings before the Office of Hearing Officers ("OHO") explained that Colletti must produce evidence to prove a claim of inability to pay. Notwithstanding this instruction, Colletti did not offer any evidence at the hearing and raised his alleged inability to pay for the first time in his closing statement. On appeal to the NAC, Colletti was also provided with written instructions about how to move to introduce additional evidence. Again, Colletti ignored these instructions, instead making unsupported claims about his inability to pay in his brief and during oral argument and offering to provide supporting documents long after the deadline for moving to introduce additional evidence had passed.

By failing to follow the procedures for proving his alleged inability to pay during FINRA's disciplinary proceedings, Colletti waived this defense. Accordingly, the Commission should deny his request to remand this matter to FINRA on these grounds.

Second, and alternatively, Colletti asks the Commission (in a single sentence at the end of his motion) to itself consider evidence of his inability to pay. Colletti's motion, however, does not come close to meeting the standard for the introduction of additional evidence before the Commission. Colletti does not attach or even describe the evidence he seeks to adduce. Moreover, Colletti does not demonstrate at all, much less with the required "particularity," that the evidence he seeks to introduce is material and that there were reasonable grounds for his failure to adduce it previously. Accordingly, to the extent Colletti's motion seeks the introduction of new evidence pursuant to Commission Rule of Practice 452, the Commission should deny it.

## **II. BACKGROUND**

On February 15, 2023, FINRA's Department of Enforcement ("Enforcement") commenced a disciplinary action against Colletti alleging that he engaged in unauthorized and excessive trading in a customer's account. RP 1-17.<sup>1</sup> Colletti denied Enforcement's allegations, and on April 3, 2023, the Hearing Officer issued a Case Management and Scheduling Order setting the schedule and other requirements for the disciplinary hearing. RP 23-34, 133-47.

Among other requirements, the Case Management and Scheduling Order explained that the "parties must present all evidence bearing on both liability and sanctions at the hearing, *including, if applicable, detailed financial information in support of an individual respondent's claim of financial hardship that would prevent the payment of a monetary sanction.*" RP 147

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<sup>1</sup> "RP \_\_" refers to the page number in the July 21, 2025 certified record filed by FINRA. "Colletti Motion" refers to Colletti's September 9, 2025 Motion for Remand Or, Alternatively, to Adduce Additional Evidence.

(emphasis added). During the initial prehearing conference, the Hearing Officer cautioned Colletti specifically to “read the forthcoming case management and scheduling order very carefully and follow all of its requirements.” RP 110.

Despite these instructions, Colletti did not raise his alleged inability to pay and did not provide any proposed exhibits prior to the hearing in this matter. RP 266-67. Instead, Colletti raised the financial strain of his wife’s medical expenses for the first time during his closing argument at the hearing, stating that the 12-month suspension and \$15,000 fine requested by Enforcement “would have serious impacts on the ability for me to provide for my family, especially my wife who has been battling stage four metastatic breast cancer for close to three years” and whose “medical expenses are extensive.”<sup>2</sup> RP 969-70. Colletti, however, did not present any documentary evidence to support his inability to pay monetary sanctions.

The Hearing Panel issued its decision on February 28, 2024. RP 1669-88. The Hearing Panel found that Colletti had engaged in unauthorized and excessive trading as alleged and, for this misconduct, imposed an eight-month suspension in all capacities and a \$10,000 fine, and ordered that Colletti pay restitution to his customer of \$5,417.<sup>3</sup> *Id.* With respect to Colletti’s claims about his financial situation, the Hearing Panel found that Colletti “raised this in the first instance during his closing argument and he never presented any documentation to support his

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<sup>2</sup> Colletti was on notice that Enforcement was seeking monetary sanctions prior to the hearing. In the complaint, Enforcement requested restitution to the customer and the imposition of one or more sanctions provided for under FINRA Rule 8310(a). RP 13. Among other potential sanctions, FINRA Rule 8310(a)(2) provides that FINRA may “impose a fine upon a member or person associated with a member.” Moreover, Enforcement specified the sanctions it was seeking in its prehearing brief, requesting that “the Hearing Panel suspend Colletti for a total of 12 months in all capacities, fine him \$15,000, and order him to pay [the affected customer] full restitution of \$5,417.17, plus pre-judgment interest.” RP 204.

<sup>3</sup> The Hearing Panel decision also ordered that Colletti requalify as a general securities representative before reentering the securities industry.

assertions that his wife’s medical issues were causing his family financial distress.” RP 1687.

Accordingly, the Hearing Panel concluded that Colletti’s “assertions of financial distress” did not “warrant further consideration.” *Id.*

Colletti appealed the Hearing Panel decision to the National Adjudicatory Council (“NAC”). RP 1689-91. In his notice of appeal, Colletti stated—notwithstanding the instructions provided at the beginning of the proceedings before the Hearing Panel—that he “was unaware he was allowed to produce documents regarding the costs associated with his wife’s medical condition and the financial distress it has caused this family.” RP 1691. Colletti further stated that he wished to “provide additional documentation.” *Id.*

FINRA’s Office of General Counsel (“OGC”) sent a March 25, 2024 letter acknowledging Colletti’s appeal and explaining the procedures on appeal (the “Acknowledgement Letter”). RP 1693-95. The Acknowledgement Letter noted that Colletti indicated that he wished to submit additional evidence and explained:

Please be advised that pursuant to **Rule 9346(b)**, a party who seeks to adduce additional evidence on appeal must file a motion seeking leave to adduce additional evidence **not later than 30 days after OHO transmits to this office and serves upon all parties the index to the record**. The motion must describe each item of proposed new evidence, demonstrate that there is good cause for failing to introduce it below, and demonstrate why the evidence is material to the proceeding. A party who seeks to adduce additional evidence must provide copies of the motion to all other parties to this proceeding.<sup>4</sup> RP 1694 (emphasis in original).

Finally, the Acknowledgement Letter invited Colletti to contact an OGC paralegal with any questions. RP 1695.

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<sup>4</sup> OGC included with the Acknowledgement Letter a copy of the rules governing appeals to the NAC, including a copy of Rule 9346(b), which sets forth the requirements for a motion for leave to introduce additional evidence. RP 1696-1733.

Colletti did not move for leave to adduce additional evidence by the deadline for doing so.<sup>5</sup> Accordingly, when OGC later sent a letter scheduling oral argument before a NAC Subcommittee, the letter noted:

Please note that, unless the NAC Subcommittee previously granted you a right to introduce additional evidence, you do not have a right to introduce new evidence. Pursuant to Rule 9346(b), the deadline for you to apply to introduce additional evidence has passed. Accordingly, the NAC's review will be limited to consideration of the record before the Hearing Panel, written briefs, and oral arguments. RP 1905.<sup>6</sup>

On June 17, 2025, FINRA issued its final decision, in which it affirmed the Hearing Panel's findings of violation and the sanctions it imposed. RP 2025-42.

### **III. ARGUMENT**

#### **A. Colletti Waived the Defense of Inability to Pay**

Adjudicators in FINRA proceedings are required to consider a respondent's bona fide inability to pay when imposing a monetary sanction. *See FINRA Sanction Guidelines (2022)* ("*Guidelines*"), <https://www.finra.org/sites/default/files/2024-03/2022-sanction-guidelines.pdf>, at 6 (General Principles Applicable to All Sanction Determinations, No. 9); *see also Bruce M. Zipper*, 51 S.E.C. 928, 931 (1993). However, "[i]t is well settled that a respondent bears the burden of demonstrating an inability to pay." *Castle Sec. Corp.*, 58 S.E.C. 826, 837 (2005);

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<sup>5</sup> OHO transmitted the record and index to OGC and provided the index to the parties on April 9, 2024. RP 1751. Accordingly, the deadline for Colletti to move to adduce additional evidence was May 9, 2024. *See* FINRA Rule 9346(b).

<sup>6</sup> Notwithstanding his failure to file a timely motion to adduce, during oral argument before the NAC Subcommittee, Colletti argued that he was unable to pay a fine and offered to provide documentation. RP 1813, 1949, 1953-54, 1991-92. But Colletti did not subsequently file a motion to adduce additional evidence or seek an extension of time for filing such a motion. *See* Rule 9146(b).

*see also Guidelines*, at 6 (explaining that the “burden is on the respondent to raise the issue of inability to pay and to provide evidence thereof”). The party raising an inability to pay defense has the burden of proving it “[b]ecause the scope of his assets is peculiarly within [his] knowledge.” *Michael Albert DiPietro*, Exchange Act Release No. 77398, 2016 SEC LEXIS 1036, at \*16 (March 17, 2016).

Adjudicators are “entitled to make a searching inquiry” when a claim of inability to pay is made. *Castle Sec. Corp.*, 58 S.E.C. at 837; *see also William J. Gallagher*, 56 S.E.C. 163, 169 (March 14, 2003) (finding that a FINRA adjudicator was “entitled to make a rigorous inquiry” into a party’s claim of inability to pay). To prevail on the defense, a party must document his income, assets, and expenses. *See, e.g., Keith D. Geary*, Exchange Act Release No. 80322, 2017 SEC LEXIS 995, at \*44 (March 28, 2017) (finding that Geary did not establish his inability to pay when he failed to document his income, assets, or expenses); *Kent M. Houston*, Exchange Act Release No. 71589, 2014 SEC LEXIS 614, at \*38-39 (February 20, 2014) (explaining that “Houston has failed to carry his burden of proving inability to pay because he did not provide any supporting evidence for this contention”).

If a party does not raise the issue of inability to pay during the initial consideration of a matter before a Hearing Panel, on appeal the NAC will “presume the issue of inability to pay to have been waived[,] unless the inability to pay is alleged to have resulted from a subsequent change in circumstances.” *See Guidelines*, at 6.

A party who seeks to raise an inability to pay defense in the first instance on appeal before the NAC may attempt to meet his burden by moving to adduce additional evidence pursuant to FINRA Rule 9346(b). FINRA Rule 9346(b) provides that a party may apply for leave to introduce additional evidence by motion filed not later than 30 days after OHO transmits

to the NAC and serves upon all parties the index to the record.<sup>7</sup> Rule 9346(b) further provides that such a motion “shall describe each item of proposed new evidence, demonstrate that there was good cause for failing to introduce it below, [and] demonstrate why the evidence is material to the proceeding.”

Colletti waived his inability to pay defense before FINRA because he failed to present evidence to support it. *See, e.g., Dep’t of Enf’t v. Goritz*, Complaint No. C10000037, 2002 NASD Discip. LEXIS 7, at \*16-18 (NASD NAC Apr. 26, 2002) (finding that a respondent waived an inability to pay defense when he did not present the argument during the hearing and did not properly move to adduce evidence related to the defense before the NAC); *cf., The Transp. Grp. (Sec.) Ltd.*, Exchange Act Release No. 100189, 2024 SEC LEXIS 1174, at \*3-4 (May 21, 2024) (explaining, in the context of a motion to dismiss for failure to exhaust administrative remedies, that requiring applicants to raise arguments and defenses before FINRA in the first instance allows “development of a record” and “promotes the efficient resolution of disputes”). From the beginning of this proceeding, Colletti was notified that it was his burden to produce evidence to establish the defense. The Case Management and Scheduling Order stated that each party must present evidence bearing on both liability and sanctions at the hearing, including specifically, “detailed financial information in support of [a] claim of financial hardship that would prevent the payment of a monetary sanction.” RP 147. Despite this instruction, Colletti presented no evidence at all at the hearing relating to his ability to pay. Indeed, Colletti did not even raise the defense until his closing statement at the hearing.

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<sup>7</sup> FINRA Rule 9346(b) provides that a party may file a motion in accordance with FINRA Rule 9146 requesting an extension of the period during which he may move for leave to introduce additional evidence. Such a motion must demonstrate that there was good cause for failing to file the motion during the prescribed period.

In his notice of appeal, Colletti indicated that he wished to present additional evidence to the NAC. RP 1691. OGC specifically referenced Colletti's request in the Acknowledgment Letter and provided instructions on how to move to do so. RP 1693-95. The Acknowledgement Letter explained that the motion must describe each item of proposed new evidence, demonstrate that there is good cause for failing to introduce it below and why the evidence is material to the proceeding, and it informed Colletti of the deadline for doing so. RP 1694. Notwithstanding these directions, Colletti never filed a motion to adduce. Instead, he again offered to provide documents in his brief and during oral argument, long after the deadline for filing a motion to adduce had passed.

Colletti argues that his failure to raise inability to pay before the Hearing Panel should not be deemed a waiver because at the time of his appeal to the NAC, Colletti was "articulating a then-current strain on his finances." Colletti Motion 1 n.1. Accordingly, Colletti argues, his inability to pay resulted from a subsequent change in circumstances and it should have been considered by the NAC. Colletti's argument is contradicted by the fact that he raised his inability to pay at the hearing during closing argument. In any event, whether Colletti's inability to pay defense was the result of a subsequent change of circumstances would have been relevant had he followed the instruction to file timely a motion to introduce additional evidence. He did not do so.

By failing to provide evidence of his alleged inability to pay in the proceedings before FINRA, Colletti waived the defense. Accordingly, the Commission should deny Colletti's request to remand the proceedings to FINRA on these grounds.<sup>8</sup>

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<sup>8</sup> To the extent Colletti's motion is asking the Commission to remand the proceeding before the parties complete merits briefing, he is seeking premature relief. See 15 USCS §

[Footnote continued on next page]

**B. Colletti’s Motion to Adduce Additional Evidence Before the Commission Does Not Meet the Standards of Commission Rule of Practice 452**

Commission Rule of Practice 452 provides that the Commission, upon its own motion or the motion of a party, “may allow the submission of additional evidence.” 17 C.F.R. § 201.452. A party who makes such a motion must show “*with particularity* that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously.” *Id.* (emphasis added); *see also Eric J. Weiss*, Exchange Act Release No. 69177, 2013 SEC LEXIS 837, at \*36-37 (March 19, 2013).

Colletti’s single-sentence request that the Commission “consider such evidence” of Colletti’s inability to pay financial sanctions comes nowhere near to meeting this standard. Colletti Motion 2. Colletti does not attach or describe the specific additional evidence he seeks to adduce. As a result, he neither explains how each piece of proposed evidence is material, nor meets his burden of establishing that he had reasonable grounds for his failure to adduce this evidence previously during FINRA’s disciplinary proceeding. *See, e.g., Capwest Sec., Inc.*, Exchange Act Release No. 71340, 2014 SEC LEXIS 4604, at \*28 n.43 (January 17, 2014) (rejecting additional evidence when the party submitting it “neither explains why it did not adduce [it] previously, as [it was] available prior to the commencement of FINRA’s disciplinary proceeding, nor shows [its] materiality”). Moreover, for the reasons stated above, Colletti cannot demonstrate that he had reasonable grounds for failing to adduce this evidence previously. Accordingly, the Commission should deny Colletti’s motion to the extent it seeks to introduce additional evidence before the Commission.

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78s(e)(1)(B) (providing the actions the Commission may take, in any proceeding to review a final disciplinary sanction imposed by a self-regulatory organization, “after notice and opportunity for hearing”).

## V. CONCLUSION

Inability to pay is a defense which Colletti had the burden to prove. Despite clear instructions from FINRA, Colletti failed to introduce any evidence at all to prove the defense. Accordingly, Colletti had the opportunity to present this defense but failed to do so, and the Commission should find that he waived the defense and deny his request to remand to FINRA. Moreover, to the extent Colletti seeks leave to introduce additional evidence in this appeal before the Commission, his motion fails to satisfy the standards set forth in the Commission's Rules of Practice, and the Commission should also deny this request.

Respectfully submitted,

*/s/Celia Passaro*

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Celia L. Passaro  
Associate General Counsel  
FINRA  
1700 K Street, NW  
Washington, DC 20006  
(202) 728-8985  
ersilia.passaro@finra.org  
nac.casefilings@finra.org

September 15, 2025

**CERTIFICATE OF COMPLIANCE**

I, Celia L. Passaro, certify that this brief complies with the length limitation set forth in Commission Rule of Practice 450(c). I have relied on the word count feature of Microsoft Word in verifying that this brief contains 2,926 words, exclusive of the pages containing the table of contents, table of authorities, and any addendum that consists solely of copies of applicable cases, pertinent legislative provisions, or rules and exhibits.

I further certify that this motion complies with the Commission's Rules of Practice by filing a motion that omits or redacts any sensitive personal information described in Rule of Practice 151(e).

Respectfully submitted,

*/s/ Celia Passaro*

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Celia Passaro  
Associate General Counsel  
FINRA  
1700 K Street, NW  
Washington, DC 20006  
(202) 728-8985  
ersilia.passaro@finra.org  
nac.casefilings@finra.org

**CERTIFICATE OF SERVICE**

I further certify that on this 15th day of September 2025, I caused a copy of the foregoing FINRA's Opposition to Colletti's Motion For Remand Or, Alternatively, To Adduce Additional Evidence, in the matter of the Application for Review of Michael Ciro Colletti, Administrative Proceeding File No. 3-22491, to be filed through the SEC's eFAP system.

And served by electronic mail on:

Robert L. Herskovits, Esq.  
Herskovits PLLC  
305 Broadway, 7th FL  
New York, NY 10007  
robert@herskovitslaw.com

*/s/ Celia Passaro*

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Celia Passaro  
Associate General Counsel  
FINRA  
1700 K Street, NW  
Washington, DC 20006  
(202) 728-8985  
ersilia.passaro@finra.org  
nac.casefilings@finra.org