UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 77398 / March 17, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-16658

In the Matter of the Application of

MICHAEL ALBERT DIPIETRO

For Review of Disciplinary Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION — REVIEW OF DISCIPLINARY PROCEEDINGS

Registered securities association suspended associated person indefinitely because of his failure to satisfy an arbitration award. *Held*, review proceeding is *dismissed*.

APPEARANCES:

Marie Mirch, Mirch Law LLP, for Michael Albert DiPietro

Alan Lawhead, *Jennifer C. Brooks*, and *Celia L. Passaro,* for the Financial Industry Regulatory Authority, Inc.

Appeal filed: June 29, 2015
Last brief received: November 13, 2015

Michael Albert DiPietro, a former registered representative of First Allied Securities, Inc. ("First Allied"), seeks review of the decision by the Financial Industry Regulatory Authority, Inc. ("FINRA") suspending him from associating with any FINRA member firm until DiPietro satisfies an arbitration award, or until any of the recognized bases for nonpayment occur. It is undisputed that an arbitration award was entered against DiPietro, he failed to pay any part of it, and a federal district court denied his motion to vacate the award.

DiPietro contends that FINRA should have stayed its proceedings pending his appeal of the district court's order. He also argues that FINRA should have credited his *bona fide* inability to pay as an excuse for his failure to satisfy the award. For the reasons explained below, both arguments are meritless, and we dismiss DiPietro's application for review. We base our findings on an independent review of the record.

BACKGROUND

In October 2004, First Allied engaged DiPietro to sell securities, insurance, advisory, and other services. DiPietro was registered with First Allied from March 2005 to December 2008, when First Allied terminated him. He was later registered with two other FINRA member firms, but has not been registered with any member firm since December 2015.[1] In addition to his prior work as a registered representative with retail clients, DiPietro is a certified public accountant with an accounting practice.

The arbitration at issue involves a claim by two First Allied clients to whom DiPietro provided services. In September 2012, the clients filed a claim against First Allied, which in turn filed a third-party claim against DiPietro in January 2013, for indemnity or contribution. First Allied settled the claim against it before the arbitration hearing, and the arbitration proceeded only on the claim against DiPietro.

On February 10, 2014, a FINRA Dispute Resolution Panel awarded First Allied $157,505.79, plus interest.[2] On the same day the award was entered, DiPietro's counsel properly received notice of the award and of DiPietro's obligation to pay it within 30 days.

DiPietro timely filed a motion to vacate the award in the U.S. District Court for the District of Arizona. The district court denied DiPietro's motion on October 1, 2014, and confirmed the award.[3] DiPietro appealed the district court's order and sought to stay the court's

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[1] According to FINRA's BrokerCheck, DiPietro ended his association with his most recent FINRA member firm in December 2015. We take official notice of this information on BrokerCheck, available at http://www.finra.org/Investors/ToolsCalculators/BrokerCheck. *See* 17 C.F.R. § 201.323 (rule of practice relating to official notice); *Gregory Evan Goldstein*, Exchange Act Release No. 71970, 2014 WL 1494527, at *1 n.1 (Apr. 17, 2014) (taking official notice of BrokerCheck records).

[2] The Panel awarded First Allied $100,000 on its claim for indemnification, $56,047.55 in attorney's fees, $1,458.24 in costs, and $8,250 in FINRA arbitration fees. Among other findings, the Panel rejected DiPietro's argument that First Allied's third-party claims should have been precluded by an earlier FINRA arbitration award in his favor against First Allied, which arose out of First Allied's termination of him.

[3] *See* Order, *DiPietro v. Hutchinson*, No. 2:14-cv-00502-DGC, Dkt. No. 68, 2014 WL 4954410, at *7 (D. Ariz. Oct. 1, 2014) ("Order").

order pending his appeal. The district court denied DiPietro's stay motion, because he had neither demonstrated a likelihood of success on the merits nor posted a supersedeas bond.[4] DiPietro's appeal remains pending as of the date of this opinion.

In the meantime, FINRA learned of the district court's confirmation of the award and served DiPietro with a suspension notice on October 7, 2014, for failure to pay the award. FINRA's notice advised DiPietro that his registration would be suspended on October 28 unless, before that date, he had demonstrated to FINRA that he met one of the four defenses enumerated in Rule 9554.[5] FINRA's notice also advised DiPietro that he could request a hearing, which would stay the effective date of the suspension. DiPietro requested a hearing, which occurred in February and March 2015. The Hearing Officer imposed a suspension, finding that two of DiPietro's asserted defenses—the existence of his pending appeal, and the fact that he had filed a motion to stay judgment—did not preclude suspension. The Hearing Officer also concluded that DiPietro had not established a bona fide inability to pay the arbitration award.

ANALYSIS

A. Standard of Review

Section 19(f) of the Securities Exchange Act of 1934 governs our review of an SRO action imposing an indefinite suspension contingent on the payment of an arbitration award.[6] Under Section 19(f), we must dismiss an appeal of the SRO's action if we find that the specific grounds on which the SRO based its action exist in fact; the SRO's determination was in accordance with its rules; those rules are, and were applied in a manner, consistent with the purposes of the Exchange Act; and the action would not impose an undue burden on competition.[7] As explained below, we find that FINRA's action meets this standard and, accordingly, dismiss DiPietro's appeal.

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[4] *See* Minute Order, *DiPietro v. Hutchinson*, No. 2:14-cv-00502-DGC, Dkt. No. 79 (D. Ariz. Oct. 27, 2014) ("Minute Order").

[5] The letter specified the four enumerated defenses under FINRA Rule 9554 (payment of the award in full, entry into a settlement agreement with the claimant, timely filed action to vacate or modify the award (which has not been denied), or bankruptcy proceedings).

[6] *See William J. Gallagher*, Exchange Act Release No. 47501, 58 S.E.C. 163, 2003 WL 1125378, at *2 (Mar. 14, 2003) (stating that since an indefinite suspension contingent on the satisfaction of certain requirements is effectively a bar from association, our review of the suspension is governed by Exchange Act Section 19(f)).

[7] DiPietro does not claim, and we see no basis for concluding, that his suspension imposes an unnecessary or inappropriate burden on competition in light of the purposes of the Exchange Act.

B. Specific Grounds for the Suspension

We find that the specific grounds on which FINRA based its suspension exist in fact. It is undisputed that DiPietro was required to pay an arbitration award of $157,505.79, plus interest, within 30 days of receiving the award.[8] DiPietro filed his motion to vacate on the 30th day after receiving the award, which stayed the obligation to pay the award. The obligation became due immediately once the district court denied his motion on October 1, 2014.[9] The parties have stipulated that DiPietro has not paid any part of the award, filed for bankruptcy protection, or entered into a settlement to pay the award. The record, therefore, supports the Hearing Officer's determination that DiPietro had not satisfied the February 2014 arbitration award to First Allied.

C. Suspension in Accordance with FINRA's Rules

We find that the suspension was in accordance with FINRA's Rules and reject DiPietro's arguments that FINRA's proceedings should have been stayed while his appeal to the Ninth Circuit was pending, and that he established an inability to pay the arbitration award.

FINRA Rule 9554 provides for expedited proceedings to suspend association with a member firm for failure to comply with an arbitration award. The rule authorizes FINRA to initiate the proceedings by issuing a written notice that specifies the grounds for, and the effective date of, the suspension; and advises the respondent of his right to file a written request for a hearing. It is undisputed that FINRA's written notice to DiPietro complied with these requirements and was properly served. It is also undisputed that after DiPietro requested a hearing, FINRA complied with the applicable hearing procedures under FINRA Rule 9559. DiPietro does not contend that the FINRA Hearing Officer conducted the hearing in an unfair manner, and our review of the record does not suggest that FINRA deviated from its procedural safeguards in this case.[10]

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[8] FINRA's rules state that "monetary awards shall be paid within 30 days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction." FINRA Rules 12904(j), 13904(j). "Days" means "calendar days." FINRA Rules 12100(j), 13100(j). DiPietro stipulated that on February 10, 2014, he received the award and was notified of his obligation to pay within 30 days.

[9] *See* NASD Notice to Members 00-55, 2000 WL 1375123, at *2 n.5 (Aug. 10, 2000) ("Notice to Members 00-55") (specifying that "[a]n award must be paid immediately when a court denies a motion to vacate or modify the award, absent a court order staying compliance with the award"). FINRA's contention at the hearing that "the award became immediately due" once the court denied the motion to vacate is consistent with Notice to Members 00-55.

[10] Exchange Act Section 15A(b)(8) requires that SROs provide "fair procedures." 15 U.S.C. § 78o-3(b)(8).

The Hearing Officer suspended DiPietro's registration until he (1) pays the award in full, (2) provides evidence that First Allied has agreed to installation payments or a settlement of the action, (3) demonstrates that a motion to vacate or modify is pending before, or has been granted by, a court, or (4) files a bankruptcy petition or demonstrates that the award has been discharged by a bankruptcy court. This was consistent with FINRA Article VI, Section 3(b),[11] and with NASD's Notice to Members 00-55, which enumerated these as the "bases for nonpayment."[12] It is undisputed that DiPietro has not paid the award, no stay has been entered pending DiPietro's appeal to the Ninth Circuit of the district court's order denying his motion to vacate the award, and there is no evidence that DiPietro has sought either settlement of the award or bankruptcy protection.

1. *DiPietro's Pending Appeal*

DiPietro contends that he should not have to satisfy the award while his appeal to the Ninth Circuit is pending. But FINRA is permitted, under Article VI, Section 3 of its By-Laws, to suspend or cancel an associated person's membership for failure to pay an arbitration award where a timely motion to vacate has not been made or "where such motion has been denied." It is undisputed that the motion has been denied. FINRA's rules do not require it to delay the effective date of a suspension or the commencement of suspension proceedings until after resolution of an appeal from a district court's denial of a motion to vacate.[13] FINRA's rules also do not excuse failure to pay simply because the respondent has appealed that denial.[14]

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[11] FINRA Article VI, Section 3(b) states that FINRA may suspend an associated person for failure to comply with an arbitration award "where a timely motion to vacate or modify such award has not been made pursuant to applicable law or where such a motion has been denied, or for failure to comply with a written and executed settlement agreement obtained in connection with an arbitration or mediation submitted for disposition pursuant to the Corporation's Rules."

[12] Notice to Members 00-55, 2000 WL 1375123, at *2.

[13] *See Gallagher*, 2003 WL 1125378, at *4 (holding that a "suspension determination was in accordance with [the] rules" of FINRA predecessor NASD, which "do[] not require [FINRA] to delay its process until all appeals of [the] denial [of the motion to vacate] are exhausted"). Although DiPietro correctly notes that FINRA is not prohibited from delaying proceedings until the appeal is over, the Hearing Officer did not act contrary to FINRA rules in declining to do so.

[14] DiPietro observes that the respondent in *Herbert Garrett Frey* was permitted to "exhaust[] all of his state court remedies to challenge the award" before being subjected to suspension proceedings, and that he should have been able to do the same. Exchange Act Release No. 39007, 53 S.E.C. 146, 1997 WL 539495, at *4 (Sept. 3, 1997). But NASD did not bring its disciplinary action in that case until the appeals were over, and nothing in that case suggests FINRA must have waited to act until DiPietro's appeals were over.

Notice to Members 00-55 specified that "[a]n award must be paid immediately when a court denies a motion to vacate or modify the award, absent a court order staying compliance with the award."[15] DiPietro sought a discretionary stay, which the court denied because DiPietro had not "shown a likelihood of success on the merits or the existence of serious questions."[16] Consistent with Notice to Members 00-55, the Hearing Officer was not required to stay the suspension when the district court declined to stay compliance with the order confirming the award.

Separately, DiPietro suggests reasons why, in his view, the award itself should be vacated.[17] An arbitration award cannot be collaterally attacked by a respondent in an FINRA expedited proceeding, and in the face of a confirmed award, such arguments do not furnish a basis to avoid payment.[18] DiPietro counters that he is not attacking the award, but seeks only to show that he "has a viable appeal." Even if true, that is irrelevant. DiPietro's obligation has not been lifted; though on appeal, the district court's order has not been stayed.

DiPietro points to a case in which we recognized FINRA's "prosecutorial discretion to bring proceedings relating to the timely payment of arbitration awards, and, in the event it exercises that discretion," its "consider[ation of] factors in mitigation."[19] He contends that FINRA should have exercised that "discretion" to let him complete his appeal. Given the record before us, FINRA's exercise of its discretion to bring proceedings against DiPietro is not

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[15] 2000 WL 1375123 at *2 n.5.

[16] Minute Order; *see Golden Gate Rest. Ass'n v. City & Cnty. of San Francisco*, 512 F.3d 1112, 1115 (9th Cir. 2008) (setting forth standard for discretionary stay pending appeal). As the Supreme Court has recognized, arbitration awards may be vacated "only in very unusual circumstances." *Oxford Health Plans LLC v. Sutter*, 133 S. Ct. 2064, 2068 (2013).

[17] DiPietro argues that the FINRA arbitrators (1) exceeded their powers by not giving effect to choice-of-venue and choice-of-law provisions in the October 2004 contract; (2) violated his "procedural due process" rights under the U.S. and California Constitutions; and (3) exhibited manifest disregard of the law by not giving preclusive effect to part of the earlier FINRA arbitration award in DiPietro's favor against First Allied. *See supra* note 2.

[18] *See, e.g., Robert Tretiak*, Exchange Act Release No. 47534, 56 S.E.C. 209, 2003 WL 1339182, at *5 (Mar. 19, 2003) ("As we have stated on numerous occasions, an applicant may not collaterally attack an arbitration award . . . in a disciplinary proceeding for failure to pay that award.").

[19] *Daniel Joseph Avant*, Exchange Act Release No. 36423, 1995 WL 630908, at *2 (Oct. 26, 1995) (describing NASD's prosecutorial discretion).

reviewable, and in any event, FINRA's proceeding against him was consistent with its authority.[20]

For these reasons, we find that FINRA acted in accordance with its rules in determining that DiPietro had an unsatisfied obligation to pay the award.

2. *DiPietro's Asserted* Bona Fide *Inability To Pay*

DiPietro also argues that he has a *bona fide* inability to pay the arbitration award.[21] To prevail on an inability-to-pay defense a respondent must "demonstrate that he is unable to make some meaningful payment toward the award from available assets or income."[22] The party arguing inability to pay has the burden of proving the defense, "[b]ecause the scope of his assets

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[20] *See Schellenbach v. SEC*, 989 F.2d 907, 912 (7th Cir. 1993) (observing that FINRA disciplinary proceedings are given "wide latitude . . . unless there is a showing of selective enforcement or an attempt to discriminate by arbitrary classification," and "are treated as an exercise of prosecutorial discretion").

[21] Under Rule 9554(a), a claim of inability to pay is not a defense for awards "involving a customer." FINRA does not argue that First Allied's claim against DiPietro involved a customer instead of a member firm, or that DiPietro's status as a FINRA registered representative makes him ineligible for an inability to pay defense.

[22] *Dep't of Enf't v. Respondent,* FINRA Expedited Proceeding No. ARB010032, at 3 (Mar. 15, 2002) (redacted), http://www.finra.org/sites/default/files/OHODecision/p006652_0_0.pdf; *see Dep't of Enf't v. Respondent*, FINRA Expedited Proceeding No. ARB010001, at 11 (July 26, 2001) (redacted), http://www.finra.org/sites/default/files/OHODecision/p006655_0_0.pdf ("An inability to pay defense may be rejected if it appears that the defendant is capable of reducing his living expenses, has the ability to divert funds from other expenditures to pay the settlement of the award, could borrow the funds, or could make some meaningful payment toward the settlement of the award from available assets or income, even if he could not pay the full amount of the award settlement.").

DiPietro attempts to distinguish FINRA Expedited Proceeding No. ARB10001 by pointing to that respondent's disciplinary history, minimal financial records, and use of available funds for other purposes. It is not dispositive that DiPietro lacks a disciplinary history or produced more financial records than in ARB10001, because the critical point is whether DiPietro has the ability to make a meaningful payment toward the award, including by reducing his use of income for other expenses, or selling or borrowing against available assets.

is peculiarly within [his] knowledge."[23] A FINRA Hearing Officer may make a "rigorous inquiry" into a respondent's claimed inability to pay.[24]

The Hearing Officer rejected DiPietro's inability-to-pay defense, finding that he had sufficient income or equity in various properties to pay at least a meaningful portion of the arbitration award.[25] We find that the Hearing Officer's determinations were in accordance with FINRA's rules.

The record establishes that DiPietro had sufficient gross income in 2014 alone to pay the award. This income came from his accounting practice, and from work with firms with which he was associated, health plans for which he served as an agent, and a bank for which he was a director. He also received in 2014 a significant loan from the FINRA member firm with which he was then associated, which he testified that he used to "support [his] business as well as [his] household during 2014." DiPietro did not use any of this income to pay the award.[26]

DiPietro also contends that, instead of his gross income, FINRA should have focused on his net income and taken his other expenses into account. FINRA has made clear that a respondent cannot establish a *bona fide* inability to pay an arbitration award if he can divert funds from other expenses to make some meaningful payment toward satisfaction of the award, even if he could not pay the full amount of the award.[27] At the hearing, DiPietro conceded that his other expenses included extra payments to "reduce the principal" owed on his home

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[23] *Zipper*, 1993 WL 538925, at *2.

[24] *Gallagher*, 2003 WL 1125378, at *3; *see also Tretiak*, 2003 WL 1339182, at *5 ("searching inquiry").

[25] The Hearing Officer also stated that "it appears that the issue is not DiPietro's inability to pay the award, but his refusal to pay an award that he finds unjust." DiPietro testified that he should not be required to indemnify or contribute to First Allied for its own fraud against its clients. Although that may be a motive for his failure to pay, the relevant question is whether he can make some meaningful payment toward the award.

[26] FINRA's brief provided details concerning DiPietro's income in 2012 and 2013. DiPietro argues that his income for those years is irrelevant to his inability to pay because he was not named as a third-party respondent until February 2013, and the award was not entered until February 2014. But FINRA does not suggest that DiPietro should have put money in escrow before he was named in the arbitration or before the award was entered. Instead, we read FINRA's brief as an effort to provide context and a fuller picture of DiPietro's finances and stream of income over time.

[27] *See* FINRA Expedited Proceeding No. ARB010001, at 11; FINRA Expedited Proceeding No. ARB010032, at 3.

mortgage; payments for more than the minimum amounts due on his credit cards and on his adult children's student loans (which he was responsible for paying); private high school tuition for a minor child; monthly gifts to an adult child to "supplement his income"; and payments for insurance premiums on a vehicle owned by another adult child.[28] DiPietro chose to pay these discretionary expenses instead of paying down the balance of the arbitration award.

Separately, an inability-to-pay defense is unavailable if a respondent can borrow against assets to satisfy the award or pay a meaningful part of it.[29] The record reflects that DiPietro had equity in real estate that could be sold or borrowed against in order to pay the award. The Hearing Officer found that DiPietro's "decision not to pay the arbitration award . . . by obtaining funds based on his assets hinges more on his own asset-allocation choices than on a genuine inability to pay." We agree.[30] DiPietro owns his primary residence, and has an interest in a commercial property purportedly held for his adult children. Both could be sold or borrowed against to pay the award.[31]

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[28] DiPietro testified at the hearing, for example, that he was "carrying the insurance" and paying premiums on a car titled in his adult daughter's name, "even though [he doesn't] have an ownership interest in" the car.

[29] *See*, *e.g.*, FINRA Expedited Proceeding No. ARB10032, at 3; *Dept. of Enf't v. Robert Tretiak*, No. C02980085, 2000 WL 33299600, at *6 (N.A.S.D.R. Mar. 10, 2000) (considering whether respondent could "borrow[] funds to pay the award"), *aff'd*, 2001 WL 199948 (N.A.C. Jan. 23, 2001), *aff'd*, Exchange Act Release No. 47534, 2003 WL 1339182 (Mar. 19, 2003); *Dist. Bus. Conduct Comm. v. Bruce M. Zipper*, No. C07910138, 1994 WL 1067241, at *4 (N.B.C.C. Oct. 31, 1994) (considering possibility that respondent had borrowed money from his family to settle a tax obligation, and could have borrowed to pay the award, in upholding finding that respondent had not met burden of showing inability to pay).

[30] It is unclear whether DiPietro could have borrowed against or sold his accounting practice, as the Hearing Officer found. We need not address that argument, however, because FINRA acted consistent with its rules in finding that DiPietro's real estate has sufficient equity to satisfy the award.

[31] The record supports the Hearing Officer's finding that "there is substantial equity in the [primary] residence" that could be used to pay the award, based on an appraisal from July 2012. DiPietro counters that the 2012 appraised value is too high, and that the appropriate value is between 65% and 77% of the appraised value. But other than the sale prices of neighboring houses (which he fails to establish are comparable), he offers no evidence to support his challenge of the appraisal's validity, its assumptions, or its methodology. He also provides no explanation for why the value of his residence would have depreciated by up to one-third since 2012. Although DiPietro has a mortgage, a home equity line of credit, and a portion of the mortgage for the commercial property secured against his primary residence, these debts are significantly less than the property's July 2012 appraised value. Although DiPietro testified that

(*continued . . .*)

DiPietro and his wife are partial owners of a limited liability company ("LLC") that, in turn, owns the commercial property.[32] DiPietro plays a significant role in financing and operating the property. The record supports the Hearing Officer's finding that there is substantial equity in the property. DiPietro, as president of the LLC, signed an agreement in June 2014, to list the property for sale, and authorized several reductions in the price. A sale at any of the prices DiPietro has authorized would generate a return, net of the debt secured on the property, sufficient to cover payment of the award. What is more, DiPietro would generate enough return to cover the award even if the property sold for the lowest appraised valuation in the record—nearly half a million dollars less than the lowest amount for which DiPietro has authorized a sale, an amount DiPietro considered a "low" estimate of the property's value.

For these reasons, we find that FINRA acted in accordance with its rules in determining that DiPietro had not established a *bona fide* inability to pay the arbitration award.

D. FINRA Rule 9554 Is Consistent with the Exchange Act's Purposes.

The FINRA rules at issue are, and were applied in a manner, consistent with the purposes of the Exchange Act. As we have explained, "[h]onoring arbitration awards is essential to the functioning of the [FINRA] arbitration system. Requiring members or associated persons to

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(*continued . . .*)
he has attempted unsuccessfully to increase his home equity line of credit, he does not dispute that he could capture his equity by selling his residence.

[32] The record also supports the Hearing Officer's finding that DiPietro has not demonstrated an inability to use the property's equity. DiPietro does not even suggest that he cannot use the property to satisfy the arbitration award, even though he contends that his adult children fully own the LLC and property. The only version of the LLC operating agreement in the record provides that 100% of the LLC's net profits are allocated fully to DiPietro himself. No document in the record corroborates DiPietro's testimony that his children own 100% of the property's equity.

According to the operating agreement, DiPietro holds 87.5% of the LLC's voting interests. He testified that when he listed the property for sale, he did so "without getting [his] children's approval first." In short, the record contains no documentary evidence that the children would have any role in receiving or deciding how to use the proceeds from a sale or loan. Even if the children did fully own the LLC and the property, DiPietro has not established his inability to use sale or loan proceeds to pay the award. Assuming that the LLC's net profits will someday be allocated to the children and not wholly to DiPietro, as the LLC operating agreement provides now, DiPietro testified that his children would likely lend or give him the proceeds needed to pay the award, although he had not yet asked them to do so. The Hearing Officer's decision correctly concluded that DiPietro could borrow or otherwise obtain funds from his children to pay the award.

abide by arbitration awards enhances the effectiveness of the arbitration process."[33] We have explained that the FINRA Rule 9554 is consistent with Exchange Act Section 15A(b)(6) and (7)[34] and will further FINRA's obligation to take appropriate action when associated persons violate FINRA rules.

DiPietro has harmed the prevailing arbitration claimant, First Allied, by causing it to wait for satisfaction of its award. Conditional suspension of DiPietro's association with FINRA members gives him an incentive to pay the award. This, in turn, furthers two central purposes of the Exchange Act—serving the public interest and the protection of investors.

* * *

In sum, we find that the grounds on which FINRA based its suspension exist in fact, that the suspension was imposed in accordance with FINRA's rules, and that those rules are and were applied in a manner consistent with the Exchange Act's purposes. Accordingly, we dismiss DiPietro's application for review.

An appropriate order will issue.[35]

By the Commission (Chair WHITE and Commissioners STEIN AND PIWOWAR).

Brent J. Fields
Secretary

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[33] *Gallagher*, 2003 WL 1125378, at *4.

[34] *See* 15 U.S.C. § 78*o*-3(b)(6), (7).

[35] We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

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For Review of Disciplinary Action Taken by

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ORDER DISMISSING APPEAL OF ACTION TAKEN BY REGISTERED SECURITIES ASSOCIATION

On the basis of the Commission's opinion issued this day, it is

ORDERED that the appeal filed by Michael Albert DiPietro be, and it hereby is, dismissed.

By the Commission.

Brent J. Fields
Secretary