

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934  
Release No. 81786 / September 29, 2017

Admin. Proc. File No. 3-17734

In the Matter of the Application of  
  
KEITH PATRICK SEQUEIRA  
  
For Review of Action Taken by  
  
FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF FINRA PROCEEDING

Registered securities association suspended associated person of member firm in all capacities in expedited proceeding based on his failure to pay an arbitration award, and suspension converted into a bar from association after associated person failed to pay award within thirty days of suspension. *Held*, review proceeding is *remanded* to registered securities association for clarification of the sanction imposed.

APPEARANCES:

*Keith Patrick Sequeira*, pro se.

*Alan Lawhead, Michael Garawski, and Jante Turner* for FINRA

Appeal filed: December 16, 2016  
Last brief received: March 29, 2017

Keith Patrick Sequeira appeals from a FINRA hearing officer's decision finding that he did not establish a cognizable defense for his failure to pay an arbitration award owed to his former employer, a FINRA member firm. Following a hearing, FINRA suspended Sequeira from association with any member and provided that the suspension would automatically convert into a bar if Sequeira did not prove within thirty days that he had complied with the award or had addressed it adequately through a settlement agreement or bankruptcy proceedings. Sequeira failed to do so, and his suspension automatically converted into a bar.

## I. Background

On August 5, 2014, FINRA entered an arbitration award against Sequeira requiring him to pay damages to his former employer for breach of a loan agreement. FINRA rules require the payment of arbitration awards within 30 days unless a court is requested to vacate the award within that time period.<sup>1</sup> On September 4, 2014, Sequeira filed a state court action against his former employer and others that sought to vacate the arbitration award. On March 27, 2015, that lawsuit was dismissed because Sequeira had not completed service on his former employer. Sequeira did not pay the award following this dismissal.

### A. FINRA instituted an expedited proceeding against Sequeira.

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 . . . .”<sup>2</sup> Although FINRA may institute a disciplinary proceeding for violation of these obligations,<sup>3</sup> FINRA Rule 9554 establishes an expedited procedure authorizing, under certain conditions, the suspension of an associated person who fails to pay an arbitration award.<sup>4</sup>

FINRA invoked this process against Sequeira on July 29, 2016, by sending him a Notice of Suspension stating that it intended to suspend his association with any member firm in any capacity because he had failed to comply with the arbitration award. The notice advised that the suspension would become effective on August 19, 2016, unless Sequeira demonstrated that he had paid the arbitration award in full; entered into a fully-executed, written settlement agreement with respect to it, with which he was current; timely filed an action to vacate or modify the award, which motion had not been “denied”; or filed for bankruptcy protection, and the award had not been deemed non-dischargeable.<sup>5</sup> The letter also advised that if Sequeira were suspended the suspension would continue until he established one or more of these defenses.

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<sup>1</sup> FINRA Rule 10330(h) (“All monetary awards shall be paid within thirty (30) days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction.”).

<sup>2</sup> FINRA By-Laws, Article VI, Section 3(b).

<sup>3</sup> See generally FINRA Sanction Guidelines at 18 (April 2017), available at [https://www.finra.org/sites/default/files/Sanctions\\_Guidelines.pdf](https://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf) (providing Sanction Guideline applicable in a disciplinary proceeding instituted to address conduct characterized as “Arbitration Award—Failure to Honor or Failure to Honor in a Timely Manner”).

<sup>4</sup> FINRA Rule 9554(a) (authorizing FINRA to send an associated person who has failed to pay an arbitration award a notice stating that “the failure to comply within 21 days of service of the notice will result in . . . a suspension from associating with any member”).

<sup>5</sup> See NASD Notice to Members 00-55, 2000 WL 1375123, at \*2 (Aug. 10, 2000) (enumerating these defenses).

On August 16, 2016, Sequeira requested a hearing before FINRA. FINRA Rule 9554(d) provides that a request for a hearing shall stay the effectiveness of a suspension noticed under the rule. Accordingly, Sequeira's request stayed the effectiveness of the suspension.

**B. A hearing officer held a hearing and sanctioned Sequeira for his failure to pay the award.**

In a Pre-Hearing Order, the hearing officer apprised Sequeira that “[t]he only issue to be resolved at the hearing is a legal one”: “whether Sequeira can assert his September 4, 2014 motion to vacate or modify the arbitration award, which the court dismissed without adjudication on the merits, as a defense to the Suspension Notice.” Sequeira contended that, although his lawsuit had been dismissed, he was not required to pay the award because the motion had not been “denied.” The hearing officer rejected Sequeira's arguments and concluded that the award had become immediately due and payable when Sequeira's lawsuit was dismissed.<sup>6</sup>

Concluding that FINRA Rule 9559(n) gave him “broad discretion to impose an appropriate sanction in th[e] expedited proceeding,”<sup>7</sup> the hearing officer suspended Sequeira from association with any FINRA member firm in any capacity and imposed fees and costs on him. Under the decision, the suspension automatically would convert to a bar if Sequeira did not establish within 30 days that he had (1) paid the award in full; (2) entered into a written settlement agreement with his former employer, with which he was current; or (3) filed a bankruptcy petition and the case was pending (or the debt was discharged). The hearing officer did not specify if the suspension or bar would terminate on the occurrence of these conditions.

In a footnote, the hearing officer explained that “[i]n assessing this sanction, I considered the fact that Sequeira has never contended that he lacks the ability to pay the award in full,” as well as what the hearing officer termed “Sequeira's unethical dilatory conduct that he used to justify his refusal to pay the arbitration award.” Elsewhere in the decision, the hearing officer found that “Sequeira waited until after FINRA sent him the Notice of Suspension before he served the long-since dismissed complaint” on his former employer to whom he owed the arbitration award. The hearing officer also cited Interpretative Material 13000(e), which provides that failure to honor an arbitration award in accordance with FINRA rules “where timely motion has not been made to vacate or modify such award pursuant to applicable law” may be deemed conduct inconsistent with just and equitable principles of trade and a violation of FINRA Rule 2010. The hearing officer further relied on a case citation “finding that [a] respondent's dilatory tactics to pry a compromise and settlement out of the claimant constituted unethical conduct and a violation of just and equitable principles of trade.”

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<sup>6</sup> *Regulatory Operations v. Keith Patrick Sequeira*, Expedited Proceeding No. ARB160035 (Hearing Officer Dec. Nov. 18, 2016), available at [https://www.finra.org/sites/default/files/OHO\\_Sequeira\\_ARB160035\\_111816\\_0.pdf](https://www.finra.org/sites/default/files/OHO_Sequeira_ARB160035_111816_0.pdf).

<sup>7</sup> See FINRA Rule 9559(n)(1) (providing that, in certain hearings requested after an expedited proceeding is instituted, the hearing officer “may approve, modify or withdraw any and all sanctions, requirements, restrictions or limitations imposed by the notice and, pursuant to Rule 8310(a), may also impose any other fitting sanction”).

## II. Analysis

Section 19(d) of the Securities Exchange Act of 1934 authorizes us to review certain actions by self-regulatory organizations (“SROs”) on a timely application filed by an aggrieved person.<sup>8</sup> As relevant here, we review SRO action that “imposes any final disciplinary sanction on any person associated with a member or bars any person from becoming associated with a member.”<sup>9</sup> Our standard of review depends on the type of SRO action at issue.

### A. We apply Section 19(e) to bars imposed as a final disciplinary sanction and Section 19(f) to bars imposed in non-disciplinary proceedings.

Exchange Act Section 19(e) applies “[i]n any proceeding to review a final disciplinary sanction.”<sup>10</sup> It requires us to consider whether (1) the disciplined person “has engaged in such acts or practices, or has omitted such acts, as the [SRO] has found him to have engaged in or omitted”; (2) “such acts or practices, or omissions to act,” violate the applicable statutes or rules “specified in the [SRO’s] determination”; and (3) “such provisions are, and were applied in a manner, consistent with the purposes of” the Exchange Act.<sup>11</sup> In such cases, we also consider whether the disciplinary sanction “imposes any burden on competition not necessary or appropriate in furtherance of the purposes of [the Exchange Act] or is excessive or oppressive,” and if we make such findings we may cancel, reduce, or require the remission of the sanction.<sup>12</sup>

Exchange Act Section 19(f) applies in a proceeding to review “the barring of any person from becoming associated with a member of” an SRO.<sup>13</sup> It provides a similar standard of review but does not direct us to consider whether a sanction is excessive or oppressive.<sup>14</sup> In conducting our review under Section 19(f) of bars imposed in non-disciplinary proceedings, we have at times remanded for FINRA “to determine whether a bar is the appropriate sanction.”<sup>15</sup>

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<sup>8</sup> See 15 U.S.C. § 78s(d).

<sup>9</sup> *Id.*

<sup>10</sup> 15 U.S.C. § 78s(e).

<sup>11</sup> 15 U.S.C. § 78s(e)(1)(A).

<sup>12</sup> 15 U.S.C. § 78s(e)(2).

<sup>13</sup> 15 U.S.C. § 78s(f).

<sup>14</sup> 15 U.S.C. § 78s(f) (requiring us to consider whether (1) “the specific grounds on which such [action] is based exist in fact,” (2) such action “is in accordance with” SRO rules, and (3) “such rules are, and were applied in a manner, consistent with the purposes of” the Exchange Act, as well as whether the action “imposes any burden on competition not necessary or appropriate in furtherance of the purposes of” the Exchange Act).

<sup>15</sup> See, e.g., *Ryan R. Henry*, Exchange Act Release No. 53957, 2006 WL 1565128, at \*4 (June 8, 2006); *Robert J. Langley*, Exchange Act Release No. 50917, 2004 WL 2973866, at \*3 (Dec. 22, 2004).

Exchange Act Section 15A(b)(7) contemplates that FINRA may discipline persons associated with its members by, among other things, ordering them to be “suspended or barred from being associated with a member.”<sup>16</sup> As a result, we generally review bars under Section 19(e) when they result from disciplinary action and under Section 19(f) when they do not. “In a disciplinary action, a sanction is imposed following a determination of wrongdoing.”<sup>17</sup> Where an SRO bars an associated person in a formal disciplinary proceeding based on a finding of misconduct, therefore, we apply Section 19(e); in doing so, we consider, among other things, whether the sanction imposed on the person is excessive or oppressive.<sup>18</sup>

In contrast, we have reviewed bars or indefinite suspensions resulting from expedited proceedings under Section 19(f) rather than as disciplinary sanctions under Section 19(e).<sup>19</sup> We have determined that SRO action indefinitely suspending a person for failure to pay an arbitration award until certain conditions have been met effectively bars the person from association with a member.<sup>20</sup> In such cases, we apply Section 19(f) because

[u]nlike in disciplinary cases, FINRA is not imposing a monetary sanction in these expedited actions; it is suspending a respondent for failing to pay a previously imposed arbitration award. There also is an explicit procedural mechanism built into these expedited actions that allows a suspension to be lifted once respondents satisfy any of . . . four defenses . . . . The main goal is to

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<sup>16</sup> 15 U.S.C. § 78o-3(b)(7).

<sup>17</sup> *Morgan Stanley & Co.*, Exchange Act Release No. 39459, 1997 WL 802072, at \*2 (Dec. 17, 1997).

<sup>18</sup> *See, e.g., David Kristian Evansen*, Exchange Act Release No. 75531, 2015 WL 4518588, at \*1 (July 27, 2015) (applying Exchange Act Section 19(e) standard and concluding that bar imposed for violating FINRA rules by failing to respond timely to requests for information and provide testimony to FINRA was “consistent with the FINRA Sanction Guidelines” and “neither excessive nor oppressive”); *Howard Brett Berger*, Exchange Act Release No. 55706, 2007 WL 1306843, at \*5 n.15, \*9 n.40 (May 4, 2007) (same with respect to action brought based on applicant’s failure to appear at FINRA on-the-record interviews).

<sup>19</sup> *See, e.g., Christopher A. Parris*, Exchange Act Release No. 78669, 2016 WL 4446331, at \*5 (Aug. 24, 2016) (applying Section 19(f) standard of review and setting aside bar imposed in expedited proceeding for failing to produce documents to FINRA); *Michael Albert DiPietro*, Exchange Act Release No. 77398, 2016 WL 1071562, at \*2 (Mar. 17, 2016) (applying Section 19(f) to appeal of FINRA decision imposing indefinite suspension until applicant paid outstanding arbitration award or otherwise established recognized basis for nonpayment).

<sup>20</sup> *See William J. Gallagher*, Exchange Act Release No. 47501, 2003 WL 1125378, at \*2 (Mar. 14, 2003).

encourage respondents to comply with the law or previously imposed orders, not to sanction them for past misconduct.<sup>21</sup>

Although as a general matter we have said that the choice of review under Section 19(e) or (f) turns on whether the bar is imposed in an expedited proceeding,<sup>22</sup> we have not elevated form over substance where the bar that results from an expedited proceeding is a disciplinary sanction. For example, in *Gregory Evan Goldstein*, FINRA commenced an expedited proceeding against the applicant for failing to respond to requests for information pursuant to Rule 8210.<sup>23</sup> Goldstein requested a hearing, and a FINRA hearing officer prepared a written decision finding that Goldstein violated Rule 8210 and barring and fining him after applying FINRA's Sanction Guidelines.<sup>24</sup> Consistent with the nature of the hearing officer's analysis, we reviewed both the bar and the fine under Section 19(e) as disciplinary sanctions.<sup>25</sup> In other cases arising from expedited proceedings in which the hearing officer found liability and analyzed various factors to determine the appropriate sanction, we also have applied Section 19(e).<sup>26</sup>

**B. We remand because we cannot determine the nature of the sanction in this case.**

We cannot determine whether Sequeira's indefinite suspension is a "final disciplinary sanction" on this record. On one hand, the hearing officer suspended Sequeira for failing to pay

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<sup>21</sup> *Order Approving Proposed Rule Change Relating to FINRA Rule 9554 to Eliminate Explicitly the Inability-to-Pay Defense in the Expedited Proceedings Context*, Exchange Act Release No. 62211, 2010 WL 2233764, at \*2 (June 2, 2010) (hereinafter "*Order*").

<sup>22</sup> *See, e.g., Michael Nicholas Romano*, Exchange Act Release No. 76011, 2015 WL 5693099, at \*4 n.10 (Sept. 29, 2015) ("Section 19(f) provides the standard for our review of expedited disciplinary proceedings for violations of Rule 8210."); *see also Order, supra* note 21, 2010 WL 2233764, at \*2 ("Section 19(e), however, does not apply to expedited proceedings. Expedited proceedings are reviewed under Exchange Act Section 19(f) . . .").

<sup>23</sup> Exchange Act Release No. 71970, 2014 WL 1494527 (Apr. 17, 2014).

<sup>24</sup> *Dep't of Enf. v. Gregory E. Goldstein*, Expedited Proceeding No. FPI120005, at Section III (Jan. 4, 2013), available at [https://www.finra.org/sites/default/files/OHODDecision/p239721\\_0\\_0.pdf](https://www.finra.org/sites/default/files/OHODDecision/p239721_0_0.pdf).

<sup>25</sup> *Goldstein*, 2014 WL 1494527, at \*12-13 (finding "that the bar imposed on Goldstein is neither excessive nor oppressive within the meaning of Exchange Act Section 19(e)," but setting aside the fine imposed on him in light of lack of evidence of customer loss).

<sup>26</sup> *See, e.g., Gremo Invs., Inc.*, Exchange Act Release No. 64481, 2011 WL 1825020 at \*2 (May 12, 2011) (concluding that "Exchange Act Section 19(e) governs our review" of "final disciplinary sanction" imposed following hearing in an expedited proceeding commenced after firm failed to file compliant annual report); *Jay Alan Ochanpaugh*, Exchange Act Release No. 54363, 2006 WL 2482466, at \*1, \*4 (Aug. 25, 2006) (conducting review under Section 19(e), where applicant appealed NASD disciplinary sanction for violation of Rule 8210 imposed following hearing in expedited proceeding); *Toni Valentino*, Exchange Act Release No. 49255, 2004 WL 300098, at \*4 & n.5 (Feb. 13, 2004) (applying Section 19(e)(2) standard).

an arbitration award. In past cases of indefinite suspensions for such conduct that terminated on compliance with the award or through other events, we have applied Section 19(f) because the suspension was not imposed as a disciplinary sanction.<sup>27</sup> Citing this line of precedent, FINRA urges us to apply the Section 19(f) standard of review to the hearing officer's decision.

On the other hand, the decision appears to impose sanctions on a basis that is inconsistent with the rationale we have articulated for reviewing suspensions imposed for failure to pay arbitration awards under the Section 19(f) standard.<sup>28</sup> Unlike in other arbitration cases we have reviewed, the hearing officer imposed a suspension that automatically converted into a bar. The hearing officer's decision suggests that he did so to sanction Sequeira for conduct inconsistent with just and equitable principles of trade. These factors support a conclusion that the hearing officer considered the sanction to be disciplinary in nature and necessary to sanction Sequeira for misconduct rather than designed to influence Sequeira to comply with the arbitration award.

We are reluctant, however, to resolve the issue of the standard of review based on the record before us. Where FINRA does not clearly explain the bases for its conclusions and the sanctions it imposes, "we cannot discharge properly our review function" and remand is appropriate.<sup>29</sup> So too here. In his decision, the hearing officer addressed the basis for the suspension and bar only in passing in a brief footnote. And although the hearing officer provided that the suspension would convert to a bar if certain events did not happen within 30 days of his decision, he did not discuss whether either the suspension or bar would terminate automatically upon the occurrence of those events.<sup>30</sup> The hearing officer thus failed to clearly explain the precise terms of the sanction and the basis for it.

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<sup>27</sup> See, e.g., *DiPietro*, 2016 WL 1071562, at \*2; *Gallagher*, 2003 WL 1125378, at \*2 & n.5; *Perpetual Sec.*, Exchange Act Release No. 48433, 2003 WL 22056640, at \*2 (Sept. 3, 2003).

<sup>28</sup> See *supra* note 21 and accompanying text.

<sup>29</sup> *Richard T. Sullivan*, Exchange Act Release No. 40671, 1998 WL 786943, at \*6 (Nov. 12, 1998) (remanding NASD's bar of registered representative until he satisfied certain requirements under Exchange Act Section 19(f) for explanation of findings); *Jonathan Feins*, Exchange Act Release No. 37091, 1996 WL 169441, at \*2 (Apr. 10, 1996) (remanding SRO disciplinary action reviewed under Exchange Act Section 19(e) for explanation of factual findings); *Donald R. Gates*, Exchange Act Release No. 36109, 1995 WL 497444, at \*2 (Aug. 16, 1995) (remanding NASD disciplinary action reviewed under Section 19(e) for explanation of factual conclusions).

<sup>30</sup> Cf. *supra* note 27 (cases addressing conditional suspensions for failure to pay arbitration awards); *Richard R. Pendleton*, Exchange Act Release No. 40237, 1998 WL 405968, at \*1 (July 21, 1998) (reviewing NASD decision to revoke applicant's right to associate until arbitration award satisfied and applicant requalified for membership by examination).

Accordingly, we remand this case to FINRA to further explain the nature of and basis for the sanction imposed on Sequeira. In doing so, we do not intend to suggest any outcome. Consistent with our uncertainty regarding the applicable standard of review, we make no determination as to the merits of Sequeira's appeal and do not reach Sequeira's arguments.

An appropriate order will issue.

By the Commission (Chairman CLAYTON and Commissioners STEIN and PIWOWAR).

Brent J. Fields  
Secretary



UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 81786 / September 29, 2017

Admin. Proc. File No. 3-17734

In the Matter of the Application of  
  
KEITH PATRICK SEQUEIRA  
  
For Review of Action Taken by  
  
FINRA

ORDER REMANDING PROCEEDINGS TO REGISTERED SECURITIES ASSOCIATION

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

ORDERED that these proceedings are remanded to FINRA for further action in  
accordance with our opinion.

By the Commission.

Brent J. Fields  
Secretary