FINANCIAL INDUSTRY REGULATORY AUTHORITY OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,	
Complainant,	Expedited Proceeding Nos. ARB250005 and ARB250007
V.	RCM Nos. 20250849589 and 20250849777
MICHAEL BARROWS	
(CRD No. 2933260),	Hearing Officer–LOM
and	EXPEDITED DECISION
ERIC JOHN LUDOVICO (CRD No. 2932082),	May 7, 2025

For their failure to pay a FINRA arbitration award in favor of a customer, Respondents are suspended from associating with any FINRA member firm in any capacity until they comply with the award or establish one of the recognized defenses to a suspension for failure to pay.

Appearances

For the Complainant: Michelle Galloway, Esq., and Jennifer L. Crawford, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Seth I. Rubinson, Esq., Rubinson Law

Respondents.

DECISION

I. Introduction

Respondents Michael Barrows and Eric John Ludovico failed to pay an arbitration award entered in favor of one of their customers. After a California state court denied their petition to vacate the award and issued a judgment confirming it, FINRA's Department of Enforcement brought this proceeding. Enforcement seeks to suspend Respondents from associating with any FINRA member firm until they satisfy the award or establish another recognized defense. Respondents assert that they have appealed the judgment confirming the arbitration award and argue that FINRA cannot suspend them while their appeal is pending. Although the appeal is pending, the judgment confirming the award is enforceable under California law because Respondents have not obtained a stay of the judgment or provided an undertaking or bond that would protect the customer from the potential dissipation of resources to pay the award while waiting for resolution of the appeal. There are no material facts in dispute.

The single existing legal issue is whether in these circumstances FINRA may now suspend Barrows and Ludovico under FINRA's By-Laws and rules for their failure to pay the arbitration award, or whether FINRA must instead wait to see if Respondents' appeal of the judgment confirming the award is successful.

The parties entered stipulations and filed proposed joint exhibits to establish the relevant facts. They also filed pre-hearing briefs. At a hearing held by videoconference on March 31, 2025, I admitted all the joint exhibits, JX-1 through JX-18, and the parties presented oral argument.¹

As more fully discussed below, I conclude that FINRA may act now, without further delay. Arbitration is intended to be a quicker, more efficient, and less expensive means of dispute resolution than litigation. It is not subject to the same plenary review as judicial decision making, under either federal or California law. Respondents' insistence that they cannot be suspended so long as their appeal is pending cuts against that fundamental and distinctive aspect of arbitration. In contrast, FINRA's use of suspension proceedings to incentivize prompt payment of arbitration awards is consistent with arbitration law. And FINRA and Securities and Exchange Commission precedents uniformly hold that under FINRA's By-Laws and rules a member firm or associated person may be suspended once a court denies a motion to vacate, regardless of any pending or potential appeal. There is no requirement to exhaust all possibilities of review before imposing a suspension.

The Respondents' suspensions were stayed under FINRA's rules while this proceeding was pending. Upon the issuance of this decision, the proceeding is no longer pending and, consequently, the suspensions are no longer stayed. Absent the stay while this proceeding was pending, the suspensions would have gone into effect on February 18, 2025. That deadline is long past. There is no reason to delay any longer. Accordingly, each Respondent is suspended as of the date of this decision from associating with any FINRA member firm in any capacity until the Respondent either complies with the award or establishes another recognized defense.

¹ The stipulations are cited here by the abbreviation "Stip." and the relevant paragraph number, as, for example, "Stip. ¶ 4." The joint exhibits are cited by the prefix "JX," an individual exhibit number, and sometimes a particular page number, as, for example, "JX-1, at 2." Respondents' opening brief is cited "Resp. Opening" with a page number, as, for example, "Resp. Opening at 5." Similarly, Enforcement's opening brief is cited as "Enf. Opening" with a particular page number, as, for example, "Resp. Reply at 4." The hearing transcript is cited by the abbreviation "Tr." and the relevant page number, as, for example, "Tr. 25-26."

II. Findings of Fact and Conclusions of Law

A. Respondents

At all times relevant to this proceeding, Respondents Barrows and Ludovico have been associated persons registered with FINRA through one or another FINRA member firm. They are currently registered.²

B. Jurisdiction

Under Article V, Section 2(a)(1) of FINRA's By-Laws, to become registered with FINRA through a FINRA member firm, a person must agree to comply with FINRA's By-Laws and rules, and with all rulings, orders, directions, decisions, and sanctions imposed under those rules. FINRA Rule 0140 additionally specifies that FINRA's rules apply to all FINRA member firms and their associated persons.

By registering, Respondents have thus agreed—and are obligated—to comply with FINRA's By-Laws and rules, including its arbitration rules.³ That obligation includes compliance with FINRA Rule 12904(j), which requires prompt payment of an arbitration award issued in a dispute between an industry member and a customer within 30 days of receipt of the award. By registering, Respondents also have agreed to be subject to Article VI, Section 3(b) of FINRA's By-Laws and FINRA Rule 9554, which together authorize FINRA to suspend a member firm or associated person who does not comply with that 30-day prompt payment rule. Under these provisions, a suspension proceeding will be stayed where a timely petition to vacate the arbitration award has been filed in a court of competent jurisdiction and that petition has not been denied. There are other recognized defenses to a suspension proceeding, but the Respondents' only defense in this case is the stay for a pending motion to vacate that has not been denied.

Respondents have not disputed that FINRA has jurisdiction over them. They dispute only how FINRA is exercising that jurisdiction.

² Stip. ¶¶ 1–4; JX-1; JX-2.

³ See, e.g., Dep't of Enforcement v. Charles Schwab & Co., No. 2011029760201, 2014 FINRA Discip. LEXIS 5, at *40 (Bd. of Governors Apr. 24, 2014) ("FINRA membership constitutes an agreement to adhere to FINRA's rules and regulations, including its [Arbitration] Code and relevant arbitration provisions contained therein.") (quoting *Anderson v. Beland*, 672 F.3d 113, 128 (2d Cir. 2011)); *See also Kidder, Peabody & Co. v. Zinsmeyer Trusts Partnershi*p, 41 F.3d 861, 863 (2d Cir. 1994) (a FINRA member firm is bound to adhere to the organization's rules and regulations, including its arbitration rules).

C. Relevant Events

1. Arbitrators Issue Award in Favor of Customer

In September 2022, a customer commenced an arbitration proceeding against Barrows, Ludovico, and a third person in FINRA's arbitration forum, alleging violations of federal and California securities laws and other causes of action. The arbitration appears to have been fully litigated. The customer was represented by counsel, as were Barrows and Ludovico. After a multi-day evidentiary hearing (including 17 four-hour hearing sessions), a panel of three arbitrators issued an arbitration award on October 30, 2023, in favor of the customer and against Barrows and Ludovico. The arbitrators held Barrows and Ludovico jointly and severally liable to pay the customer damages of a little more than \$1 million, plus simple interest at the rate of 7% per annum for the period from August 1, 2023, through October 30, 2023, the date of the award. The arbitrators also imposed certain costs and fees.⁴

On October 30, 2023, the same day the arbitrators issued the award, FINRA served written notice of the award on Respondents and informed them that it must be paid in full within 30 days of receipt, unless they filed a motion to vacate the award before the running of the 30-day period.⁵ The notice explained that Respondents could file a motion to vacate in a federal or state court of appropriate jurisdiction pursuant to the Federal Arbitration Act ("FAA") or applicable state statute. The notice also cautioned Respondents that FINRA could bring an expedited suspension proceeding pursuant to Article VI, Section 3 of the FINRA By-Laws and FINRA Rule 9554 if they failed to comply with the arbitration award.⁶

Respondents did not pay the arbitration award within the 30-day prompt payment window. Instead, they petitioned to vacate it and thereby obtained a stay of any suspension for failure to pay.

2. Respondents Petition to Vacate the Arbitration Award and Customer Seeks Judgment Confirming Award

On November 29, 2023, Respondents timely filed a petition to vacate the arbitration award in the Superior Court of California for the County of Los Angeles ("LA County Superior Court").⁷ The customer cross-petitioned to confirm the award.⁸

⁴ JX-3; Stip. ¶¶ 5–6. The arbitrators found that the third person was negligent. He was held jointly and severally liable with Barrows and Ludovico for costs and a small filing fee.

⁵ Stip. ¶ 7; JX-4.

⁶ Stip. ¶ 7; JX-4.

⁷ Stip. ¶ 8; JX-5.

⁸ Stip. ¶ 9.

3. Trial Court Denies Petition to Vacate and Confirms Award

In a ruling filed September 6, 2024, the LA County Superior Court denied Respondents' petition to vacate the arbitration award and at the same time granted the customer's cross-petition to confirm the award.⁹ On October 1, 2024, the court entered a judgment confirming the award and adjudging Respondents jointly and severally liable to the customer for compensatory damages, interest, costs, and forum fees. The total amount owed was a little more than \$1 million. The judgment additionally held Respondents liable for simple interest at the rate of 7% per annum for the period from October 31, 2023 (the day after the arbitration award was issued) to the date of the judgment confirming the award.¹⁰ The trial court also held them jointly and severally liable to the customer for simple interest at the rate of 10% per annum on all the money they owed under the judgment from the date of the judgment until the date of payment.¹¹ Accordingly, the total amount Respondents owe the customer is increasing daily.

The LA County Superior Court denied the petition to vacate for several reasons. Among them was that Respondents failed to serve the customer with the petition to vacate until the deadline for service under California law had passed.¹² The court also concluded that Respondents were objecting to the classification of one of the arbitrators as a public arbitrator when the information on which their objection was based had been disclosed to Respondents. The court deemed them to have waived their objection by not raising it until they suffered an adverse ruling in the arbitration proceeding.¹³

Respondents did not pay the arbitration award after their motion to vacate the award was denied.

4. FINRA Issues 2024 FINRA Suspension Notices

On October 21, 2024, FINRA served each Respondent with a notice of suspension under FINRA Rule 9554, which gave each a grace period of 21 days to pay the award before being suspended.¹⁴

⁹ Stip. ¶ 10; JX-6.

¹⁰ Stip. ¶¶ 11–12; JX-7.

¹¹ Stip. ¶¶ 11–12; JX-7.

¹² JX-6, at 1–3.

¹³ JX-6, at 1, 3–4.

¹⁴ Stip. ¶ 13; JX-8; JX-9.

5. Respondents Take Steps to Block Suspensions

On October 29, 2024, Barrows and Ludovico filed a notice of appeal of the judgment confirming the award with the LA County Superior Court, the court that had entered the judgment.¹⁵

On November 8, 2024, Respondents timely submitted a hearing request to the Office of Hearing Officers, asserting as a defense that they had filed an appeal of the judgment confirming the award with the LA County Superior Court.¹⁶ The Office of Hearing Officers did not accept the request for a hearing because Respondents had not asserted a valid defense.¹⁷ Historically, FINRA and the SEC have held that after a court denies a motion to vacate an arbitration award in FINRA's forum a suspension may be imposed, regardless of any pending or potential appeal.¹⁸ No hearing was scheduled and no formal decision was issued by the Office of Hearing Officers.¹⁹

On November 13, 2024, Respondents filed a complaint in the Superior Court of California for the County of Orange ("Orange County Superior Court") seeking declaratory and injunctive relief to block FINRA from suspending them.²⁰ This is a different California trial court from the one that denied Respondents' motion to vacate and entered the judgment confirming the arbitration award.

On November 15, 2024, FINRA suspended Respondents from association with any FINRA member pursuant to FINRA Rule 9554 and the October 21, 2024 notices of suspension.²¹

But that same day, November 15, 2024, the Orange County Superior Court filed a minute order granting Respondents' ex-parte application for a temporary restraining order ("TRO") and setting a preliminary injunction hearing for the following month.²² The TRO prohibited FINRA from initiating or continuing any suspensions against Barrows and Ludovico pursuant to FINRA

²¹ Stip. ¶ 18.

²² JX-13.

¹⁵ Stip. ¶ 14; JX-10.

¹⁶ Stip. ¶ 15.

¹⁷ Stip. ¶ 16; JX-11.

¹⁸ See, infra at 19; See also NASD (now FINRA) Notice to Members 00-55, at 2 (Aug. 2000) ("NTM 00-55"), https://www.finra.org/rules-guidance/notices/00-55. Twenty-five years ago, in NTM 00-55, NASD (now FINRA) gave notice to the industry of the recognized defenses to a suspension warning letter for failure to pay an arbitration award.

¹⁹ Stip. ¶ 16; JX-11.

²⁰ Stip. ¶ 17; JX-12.

Rule 9554.²³ The minute order reflects that the Orange County Superior Court inquired why the case was filed in Orange County instead of LA County Superior Court.²⁴ Respondents' counsel evidently told the Court that his clients were licensed in Orange County.²⁵ It is unclear what Respondents told the Orange County Superior Court about the proceeding that took place in the LA County Superior Court.

Because of the TRO, on November 18, 2024, FINRA lifted the Respondents' suspensions.²⁶ FINRA then removed the case to the United States District Court for the Central District of California.²⁷ FINRA agreed to an extension of the TRO until January 6, 2025, and the District Court entered an order to that effect.²⁸ The District Court later extended the TRO another time.²⁹

On January 17, 2025, following oral argument, the District Court denied Respondents' request for a preliminary injunction.³⁰ As extended, the TRO expired on January 24, 2025.³¹

Respondents did not comply with the arbitration award after the TRO expired.³²

6. Respondents Appeal Judgment Confirming the Award

After FINRA lifted Respondents' suspensions, but before the TRO ultimately expired, on November 22, 2024, Respondents lodged a notice of appeal of the judgment confirming the arbitration award with the Second District Court of Appeal in California. That appeal is still pending.³³

7. Judgment Confirming Award Is Enforceable While Appeal Pending

Under California law the judgment confirming the arbitration award can be executed and enforced, notwithstanding the lodging of the appeal. The California Code of Civil Procedure provides, "Unless an undertaking is given, the perfecting of an appeal shall not stay enforcement of the judgment . . . in the trial court if the judgment . . . is for . . . [m]oney or the payment of

²³ Stip. ¶ 19.

²⁴ JX-13, at 1.

²⁵ JX-13, at 1.

²⁶ Stip. ¶ 20.

²⁷ Stip. ¶ 21.

²⁸ Stip. ¶ 22.

²⁹ Stip. ¶ 24.

³⁰ Stip. ¶ 23.

³¹ Stip. ¶ 24.

³² Stip. ¶ 28.

³³ Stip. ¶ 25; JX-14.

money³⁴ The judgment confirming the arbitration award and ordering Respondents to pay the customer the amount of money specified in the judgment is precisely that kind of judgment.

Indeed, another provision of the California Code of Civil Procedure dealing with the confirmation of arbitration awards specifically provides that a judgment confirming an arbitration award is enforceable in the same manner as any other judgment of the court of the same type.³⁵ In other words, a judgment confirming an arbitration award for money damages is enforceable the same as any other judgment for money damages. Under the heading "Entry, effect, and enforcement of judgment on confirmation [of an arbitration award]," the statute states that, when an arbitration award is confirmed, a judgment must be entered in conformity with the award, and that judgment "may be enforced like any other judgment of the court in which it is entered. . . . "³⁶

Under California law, a party can stay the enforcement of a judgment for money damages while an appeal is pending by giving an undertaking that protects the adverse party from the potential dissipation of funds during the pendency of the appeal.³⁷ California requires that such an undertaking be double the amount of the judgment unless the undertaking is given by an admitted surety insurer, in which case the amount required is one and one-half times the amount of the judgment.³⁸

At no time has either Respondent given an undertaking, by posting a bond, to stay enforcement of the lower court's judgment while it is on appeal.³⁹ Nor has either Respondent sought relief via writ of supersedeas from the appellate court to stay enforcement of the judgment confirming the award while it is on appeal.⁴⁰

³⁵ Code Civ. Proc., § 1287.4.

³⁶ Code Civ. Proc., § 1287.4.

³⁹ Stip. ¶ 26.

³⁴ Code Civ. Proc., § 917.1(a)(1); *Ace Design & Constr. Inc. v. Maa Palm Desert Hosp. Inc.*, 2024 Cal. Super. LEXIS 60329, at *2–3 (Sup. Ct. Riv. Dec. 4, 2024) ("[I]n order to stay the execution of a money judgment until the final resolution of the case on appeal, the judgment debtor must file an undertaking for double the amount of the judgment, or one and one-half times the amount of the judgment if the undertaking is given by an admitted surety insurer.").

³⁷ Lewin v. Anselmo (1997) 56 Cal.App.4th 694, 701 ("[T]he statute providing for an appeal bond is designed to protect the judgment won in the trial court from becoming an uncollectible while the judgment is subjected to appellate review."); *Ace Design*, 2024 Cal. Super. LEXIS 60329, at *2–3 ("[I]n order to stay the execution of a money judgment until the final resolution of the case on appeal, the judgment debtor must file an undertaking for double the amount of the judgment, or one and one-half times the amount of the judgment if the undertaking is given by an admitted surety insurer.").

³⁸ Code Civ. Proc., § 917.1(b).

 $^{^{40}}$ Stip. ¶ 27. A writ of supersedeas is a document issued by an appellate court to the trial court directing that execution on a judgment be stayed pending appeal. Rule 8.824 of the California Rules of Court sets out the requirements for obtaining such a writ in California.

What this means is that the judgment in this case confirming the arbitration award and ordering Respondents to pay their customer what they owe under the arbitration award is currently enforceable under California law. California has legislated that, even if there is a potential for a damage award to be overturned on appeal, the judgment creditor should be protected.⁴¹ If the judgment creditor is not protected by an undertaking or bond, then the creditor is not required to wait until resolution of any appeal to execute on the judgment. Respondents are currently under a legal obligation to pay the award, as reflected in the judgment confirming it. Suspending Respondents from association with any FINRA member until they pay the arbitration award would in no way interfere with the operation of California law or Respondents' rights during their appeal.

8. FINRA Issues 2025 FINRA Suspension Notices

On January 24, 2025, after the TRO imposed by the U.S. District Court expired, FINRA sent each Respondent another notice of suspension under FINRA Rule 9554.⁴² Barrows and Ludovico each received the notice the same day, on January 25, 2025.⁴³ Both notices were properly served.⁴⁴ Neither Respondent has paid any part of the arbitration award.⁴⁵

9. Respondents Request OHO Hearing

After receiving the 2025 suspension notice, each Respondent timely requested a hearing with the Office of Hearing Officers, Barrows on February 7, 2025, and Ludovico on February 11, 2025.⁴⁶ The Office of Hearing Officers accepted their requests.⁴⁷ I held a pre-hearing conference separately in each case on February 14. At those pre-hearing conferences, the parties agreed to have the cases consolidated, and, afterward, the Chief Hearing Officer issued an Order consolidating them.

The parties agreed to a briefing schedule on the issue of whether FINRA can suspend Respondents while their appeal of the judgment confirming the arbitration award is pending. Along with their briefs, they filed stipulations and proposed joint exhibits. The briefing

⁴⁶ Stip. ¶ 37.

⁴⁷ Stip. ¶ 38.

⁴¹ Ace Design, 2024 Cal. Super. LEXIS 60329, at *4 (A money judgment may be enforced after entry of the judgment; there is no requirement that it must be "final" for a writ of execution to issue). See also Lomeli v. Dep't of Corr. (2003) 108 Cal.App.4th 788, 798 ("[T]here are many instances in which the taking of an appeal will not stay the enforcement of a judgment.").

⁴² Stip. ¶¶ 29–30; JX-15; JX-16.

⁴³ Stip. ¶¶ 31, 33.

⁴⁴ Stip. ¶¶ 32, 34.

⁴⁵ Stip. ¶¶ 35–36. Additionally, neither Respondent has entered into a fully executed, written settlement agreement with the arbitration claimant or filed for bankruptcy protection. These are among the long-recognized defenses to a suspension for failure to pay an arbitration award. *See* NTM 00-55.

concluded on March 24, 2025. At the hearing on this matter, on March 31, 2025, I admitted all the proposed exhibits, JX-1 through JX-18, and heard oral argument. The parties agreed on the record that the stipulations and exhibits laid the factual predicate for argument on the legal issue, and that the hearing would lead to an expedited decision in this matter, just the same as a hearing in which witnesses testify.⁴⁸

D. Legal and Regulatory Framework for Arbitration

It is necessary to discuss the legal and regulatory framework for arbitration to understand how FINRA's arbitration rules and expedited suspension proceedings fit into that framework and serve the purposes of arbitration. With that background, it becomes plain that Respondents' insistence that they cannot be suspended until their appeal is resolved does not fit within the framework of arbitration law and does not comport with FINRA's By-Laws and rules.

1. Federal Law

Congress originally enacted the FAA in 1925, and, with only minor amendments, it is substantially the same today as it was a century ago.⁴⁹ The statute applies to arbitration proceedings involving interstate or foreign commerce, including arbitration in FINRA's arbitration forum.⁵⁰ The FAA strictly limits the grounds for vacating, modifying, or correcting an arbitration award and forecloses the kind of full review that is ordinarily applied to judicial decisions.⁵¹ Congress determined that permitting plenary review of arbitration would undermine its policy of favoring arbitration as an expeditious and relatively inexpensive means of resolving disputes.⁵²

Section 10 of the FAA authorizes a federal district court to vacate an arbitration award, but only on specific, limited grounds. Those grounds involve serious abuses of authority,

⁴⁸ Tr. 5–8.

⁴⁹ 9 U.S.C. §§ 1–16.

⁵⁰ See, e.g., Gross v. HSBC Bank USA, N.A., No. 1:21-cv-08636 (PAC), 2022 U.S. Dist. LEXIS 133781, at *4 (S.D.N.Y. July 27, 2022) ("FINRA arbitral awards are subject to judicial review under the Federal Arbitration Act

^{....);} Bishop v. Dalton Kent Sec. Grp., Inc., No. 21 Civ. 8957 (PAC) (SLC), 2022 U.S. Dist. LEXIS 100901, at *5 (S.D.N.Y. June 6, 2022) ("The FAA governs confirmation of an award rendered in a FINRA arbitration."), adopted, 2022 U.S. Dist. LEXIS 113271 (June 27, 2022).

⁵¹ *McLaurin v. Terminix Int'l Co., LP*, 13 F.4th 1232, 1238 (11th Cir. 2021) ("[T]he FAA provides only limited grounds for undoing or modifying an arbitration award, such as fraud, corruption, or an evident miscalculation."); *Ruggiero v. Richert*, No. 10-23539-CIV-COOKE/TURNOFF, 2011 U.S. Dist. LEXIS 77470, at *4–5 (S.D. Fla. July 18, 2011) (Judicial review of arbitration awards is limited, and courts should defer to an arbitrator's resolution of a dispute whenever possible.).

⁵² Cristo v. Charles Schwab Corp., No. 17-cv-1843-GPC-MDD, 2021 U.S. Dist. LEXIS 244294, at *7 (S.D. Cal. Dec. 21, 2021) (citations and quotations omitted); *Bricklayers & Allied Craftworkers*, 941 F. Supp. 2d 912, 915–16 (N.D. Ill. 2012) (collecting cases declaring that review of arbitration awards must be limited to protect the economical, streamlined arbitration process).

corruption, and unfair prejudice.⁵³ The statutory grounds for vacatur do not include review of the merits of an arbitration award or procedural errors that have not prejudiced a party. As the Fourth Circuit Court of Appeals has said, a federal court may vacate an arbitration award only where an arbitrator's error "deprives a party to the proceeding of a fundamentally fair hearing."⁵⁴ Arbitration awards are presumed to be correct, and the burden to rebut the presumption is on the party requesting vacatur.⁵⁵ An arbitration award "will be enforced so long as there is some colorable justification for the outcome. . . . By contrast, the grounds for vacatur are narrow, reaching awards that are the product of corruption, evident partiality, misconduct or misbehavior, or where the arbitrators exceeded their jurisdiction."⁵⁶ Arbitration awards are reviewed under a "highly deferential" standard.⁵⁷

Section 11 of the FAA permits a federal court to modify or correct an arbitration award "where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award."⁵⁸ It also allows modification or correction where the arbitrators "awarded upon a matter not submitted to them" that does not affect the merits or "where the award is imperfect in matter of form not affecting the merits."⁵⁹ The grounds for modifying or correcting an arbitration award under this provision of the FAA have been described as "grudgingly narrow."⁶⁰ Section 11 "does not permit modification where the award is not the result of some careless or obvious mathematical mistake."⁶¹ "A court may not modify an arbitration award 'simply because it believes the arbitrator incorrectly interpreted a contract."⁶²

⁵⁸ 9 U.S.C. § 11.

⁵⁹ Id.

⁵³ 9 U.S.C. § 10(a). The statutory grounds for vacating an arbitration award are: (i) where the award was procured by corruption, fraud, or undue means; (ii) where there was evident partiality or corruption in the arbitrators; (iii) where the arbitrators were guilty of misconduct in refusing to postpone the hearing or rejecting evidence material to the controversy; or (iv) where the arbitrators exceeded their powers or so imperfectly executed them that mutual, final, and definite award was not made.

⁵⁴ Wachovia Sec., LLC v. Brand, 671 F.3d 472, 480 (4th Cir. 2012).

⁵⁵ Frazier v. Citifinancial Corp., LLC, 604 F.3d 1313, 1321 (11th Cir. 2010); Franskousky v. Morgan Stanley Smith Barney LLC, No. 3:14-cv-878-J-32JRK, 2014 U.S. Dist. LEXIS 174120, at *6 (M.D. Fla. Dec. 17, 2014).

⁵⁶ Ivan v. Interactive Brokers, LLC, No. 23-7660, 2024 U.S. App. LEXIS 31789, at *2 (2d Cir. Dec. 16, 2024).

⁵⁷ Unite Here v. Rancheria, No. 2:23-cv-02767-KJM-SCR, 2024 U.S. Dist. LEXIS 222680, at *19 (E.D. Cal. Dec. 9, 2024).

⁶⁰ Chen v. Kyoto Sushi, Inc., No. 15-CV-7398 (DLI) (RER), 2021 U.S. Dist. LEXIS 64627, at *5 (E.D.N.Y. Apr. 1, 2021) (quoting *Companhia de Navegacao Maritima Netumar v. Armada Parcel Serv.*, No. 96 Civ. 6441 (PKL), 2000 U.S. Dist. LEXIS 558, at *16 (S.D.N.Y. Jan. 25, 2000)).

⁶¹ Kellner v. Amazon & Amazon Officers, No. 1:20-CV-06322 (AMD)(PK), 2022 U.S. Dist. LEXIS 37143, at *9 (E.D.N.Y. Mar. 1, 2022), adopted, 2022 U.S. Dist. LEXIS 57426 (Mar. 29, 2022).

⁶² Kellner, 2022 U.S. Dist. LEXIS 37143, at *9–10 (quoting Foster Wheeler Env't Corp. v. EnergXTN, LLC, No. 13-CV-1178 RA, 2014 U.S. Dist. LEXIS 33635, at *17 (S.D.N.Y. Mar. 13, 2014)).

The FAA places a time limit on when the losing party in arbitration may initiate a petition to vacate an arbitration award. It provides that notice of a motion to vacate must be served upon the adverse party within three months after the award is filed or delivered.⁶³ That deadline is not flexible. If a motion to vacate is even one day late, it will be rejected.⁶⁴

The FAA separately provides that the successful party in arbitration has a longer time to file a motion to confirm an arbitration award—a year.⁶⁵A motion to confirm is ordinarily a request for the court to perform a ministerial act—confirm the award as it is because it has not been vacated, corrected, or modified.⁶⁶ Confirmation of an arbitration award results in an enforceable judicial judgment.⁶⁷ Confirmation essentially gives the winning party a tool to enforce the award where the losing party has not had the arbitration award vacated but nevertheless has failed to comply with the award.

Notably, the FAA does not provide for an appeal of a petition to vacate that has been denied. The denial of such a petition does not of itself impose any additional obligation on the party who sought it. That party remains subject to the arbitration award just as before. The losing party in the arbitration may still fail to pay the award after the denial of a petition to vacate. In that case, under the FAA, the successful arbitration claimant must seek a judgment confirming the award. Then the judgment can be executed upon to enforce the arbitration award. But the judgment confirming the award, like any judgment, can be appealed by the party whose petition to vacate was denied.

Consistent with Congress's dictate in the FAA, the U.S. Supreme Court is protective of what it calls the "essential virtue" of arbitration—the ability to resolve disputes "straight away."⁶⁸ Arbitration is intended to provide a quicker, more efficient, and less expensive alternative to ordinary litigation in the courts, and those purposes are served by limiting the ability to challenge an arbitration award.⁶⁹ Indeed, the scope of judicial review of an arbitration

65 9 U.S.C. § 9.

⁶⁷ *Laborers' Loc. Union Nos. 472 v. CTX Infrastructure, LLC*, No. 1:23-cv-22774-KMW-AMD, 2024 U.S. Dist. LEXIS 135226, at *3 (D.N.J. July 30, 2024) (confirmation of an arbitration award converts it into an enforceable judgment).

68 Hall St. Assocs., L.L.C. v. Mattel, Inc., 552 U.S. 576, 588 (2008).

^{63 9} U.S.C. § 12.

⁶⁴ Nationwide Med. Supply, Inc. v. Texla Energy Partners, LLC, No. CV 24-5082-DMG (MARx), 2025 U.S. Dist. LEXIS 61437, at *9 (C.D. Cal. Mar. 31, 2025). In order to avoid a suspension for failure to pay an arbitration award, FINRA requires both that a petition to vacate be filed within 30 days and that the petition be served timely under the applicable law. See, infra at 17-18 & n.92.

⁶⁶ *Citigroup, Inc. v. Abu Dhabi Inv. Auth.*, 776 F.3d 126, 132 (2d Cir. 2015) (a judgment confirming an arbitration award is a summary proceeding that makes what is already a final arbitration award a judgment of the court).

⁶⁹ See, e.g., Admin. Dist. Council 1 of Ill. of the Int'l Union of Bricklayers & Allied Craftworkers, AFL-CIO v. Masonry Co., 941 F. Supp. 2d 912, 916 (N.D. Ill. May 18, 2012). The court there said, "In keeping with the federal policy favoring arbitration, the courts must limit the ability of the losing party in arbitration to challenge the arbitration ruling in supplemental litigation." Consistent with that principle, the court asserted on a different motion

award "is among the narrowest known at law."⁷⁰ "[T]o allow full judicial scrutiny of arbitration awards would frustrate the purpose of having arbitration at all."⁷¹ The arbitrators' decision is intended to be the end of a dispute, not the launch pad for further litigation and review.⁷²

2. California Law

Federal district courts are not the only courts that may be petitioned to confirm, vacate, modify, or correct an arbitration award. State courts may also be petitioned by the parties for appropriate relief after the issuance of an arbitration award. To the extent that state law does not conflict with the FAA, it will supplement the federal statute and apply to a state court's review of an arbitration award.⁷³

In this case, as discussed above, Respondents filed a petition to vacate the arbitration award in a California state trial court, and Respondents have now appealed the judgment confirming the arbitration award to a California state appellate court.

Like the FAA, California law favors the resolution of disputes in arbitration as a speedy and relatively inexpensive means of dispute resolution.⁷⁴ "As a consequence, the grounds for challenging an arbitration awar[d] are limited: '[I]t is the general rule that, with narrow exceptions, an arbitrator's decision cannot be reviewed for errors of fact or law."⁷⁵ Under the applicable California statutory provisions, "courts may not review binding arbitration awards for mere error of law or fact even if on its face [that] would result in substantial injustice."⁷⁶

⁷³ Shimko v. Wells Fargo Clearing Servs., LLC, No. 9:19-CV-81487-ROSENBERG/REINHART, 2019 U.S. Dist. LEXIS 222125, at *2–3 (S.D. Fla. Dec. 27, 2019).

⁷⁵ *Id.* at *11.

in the same case, "To allow courts to second-guess arbitrators' decisions would undermine the economical efficiency that arbitration offers." *Int'l Union of Bricklayers*, No. 12 C 233, 2012 U.S. Dist. LEXIS 153722, at *17 (N.D. Ill. Oct. 25, 2012). The purpose of arbitration is "to provide parties with a speedier and less costly alternative to litigation." *Cunningham v. Ford Motor Co.*, No. 21-cv-10781, 2022 U.S. Dist. LEXIS 127786, at *9 (E.D. Mich. July 19, 2022) (quoting *Stout v. J.D. Byrider*, 228 F.3d 709, 714 (6th Cir. 2000)).

⁷⁰ UBS Fin. Servs. v. Padussis, 842 F.3d 336, 339 (4th Cir. 2016) (citing Apex Plumbing Supply, Inc. v. U.S. Supply Co., Inc., 142 F.3d 188, 193 (4th Cir. 1998)).

⁷¹ Apex Plumbing Supply, Inc., 142 F.3d at 193.

⁷² B.L. Harbert Int'l v. Hercules Steel Co., 441 F.3d 905, 906 (11th Cir. 2006) ("The laudatory goals of the FAA will be achieved only to the extent that courts ensure arbitration is an alternative to litigation, not an additional layer in a protracted contest.").

⁷⁴ *Moncharsh v. Heily & Blase* (1992), 3 Cal.4th 1, 9 (The California legislature has enacted a detailed, comprehensive statutory scheme for arbitration and expressed a "strong public policy in favor of arbitration as a speedy and relatively inexpensive means of dispute resolution."). In *Moncharsh*, the California Supreme Court recounted at length the history of arbitration law in California, concluding that judicial review of arbitration awards is very limited and must be based on the statutory grounds for vacating or correcting an arbitration award. *Id.* at *8–28.

⁷⁶ *Mariani Nut Co. v. Simple Foods*, No. 34-2022-00318177-CU-PA-GDS, 2023 Cal. Super. LEXIS 5385, at *7 (Sup. Ct. Sac. Feb. 9, 2023); *See also L.A. County Fire v. SEIU, Local 721 Jorge Velasquez*, No. 22STCP03245,

"Ensuring arbitral finality thus requires that judicial intervention in the arbitration process be minimized."⁷⁷

The California Code of Civil Procedure permits a party to an arbitration proceeding to petition a court to confirm, vacate, or correct the award.⁷⁸ Like the FAA, California provides a shorter deadline for serving and filing a petition to vacate an arbitration award than the deadline for seeking confirmation. A party has only 100 days after service of the award to serve and file a petition to vacate it; but the adverse party has four years to seek confirmation.⁷⁹ In this case, one of the reasons that the California trial court denied Respondents' motion to vacate the arbitration award was that Respondents failed to serve the successful arbitration claimant, the customer, by the applicable deadline.⁸⁰

Under California law, a court "shall confirm the award as made" unless it vacates the award, dismisses the proceedings, or corrects the award and confirms it as corrected.⁸¹ In California, the statutory grounds for vacating or correcting an arbitration award are, consistent with the FAA, strictly limited, and "any doubts must be resolved in favor of the arbitration award."⁸² A California court can vacate an arbitration award only if it finds that it was "procured by corruption, fraud or other undue means" or was issued in other specified circumstances where the rights of a party in arbitration were substantially prejudiced.⁸³ And a California court can only correct an arbitration award where there was "an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award," or where the arbitrators exceeded their powers and the correction would not affect the merits of the decision, or where the award is "imperfect in a matter of form" and correction would not affect the merits of the controversy.⁸⁴

⁷⁹ Code Civ. Proc., § 1288.

²⁰²³ Cal. Super. LEXIS 15069, at *2 (Sup. Ct. L.A. Feb. 16, 2023) ("It is within the power of the arbitrator to make a mistake either legally or factually. When parties opt for the forum of arbitration they agree to be bound by the decision of that forum knowing that arbitrators, like judges, are fallible.").

⁷⁷ Moncharsh, 3 Cal.4th 1, 10.

⁷⁸ Code Civ. Proc., § 1288.

⁸⁰ JX-6, at 2–3. Respondents filed their petition to vacate within 30 days after the award issued, on November 29, 2023, as they were required to do to avoid a FINRA suspension proceeding. The 100-day period for *both* filing and serving the petition to vacate under California law expired on February 7, 2024. But Respondents did not serve their customer, the successful claimant in arbitration, until March 2, 2024. JX-6, at 1–3.

⁸¹ Cal. Civ. Proc. Code, § 1286.

⁸² Mariani Nut Co., 2023 Cal. Super. LEXIS 5385, at *6.

⁸³ Code Civ. Proc., § 1286.2.

⁸⁴ Code Civ. Proc., § 1286.6.

In sum, under California law a court must confirm an arbitration award except where the award is shown to have been the product of corruption or other abuses or where an obvious mistake like a typographical error can be corrected without altering the substance of the award.⁸⁵

The narrow scope of review under both the FAA and California law is critical to the proper functioning of an arbitration process to streamline the resolution of disputes. As the Fourth Circuit Court of Appeals has explained, "[T]he narrow standard of review acts as a bulwark against legal ingenuity. Lawyers can easily find one thing or another in almost any proceeding to which they wish to take exception."⁸⁶ The Seventh Circuit Court of Appeals has similarly said, "Arbitration can be an effective way to resolve a dispute in less time, at less expense, and with less rancor than litigating in the courts. Arbitration loses some of its luster, though, when one party refuses to abide by the outcome⁸⁷ Federal courts have lamented that there is a "genre of almost-reflexive appeal of arbitration awards . . . leading to arbitration no longer being treated as an alternative to litigation, but as its precursor."⁸⁸

3. FINRA's Arbitration Forum

The fundamental purpose of arbitration—to provide a streamlined, less expensive method of dispute resolution that is not subject to exhaustive review—informs the proper understanding of FINRA's By-Laws and rules governing arbitration and the prompt payment of arbitration awards. FINRA's By-Laws and rules, as discussed below, encourage prompt resolution of any challenge to an arbitration award and are consistent with both federal and California law.

FINRA provides an arbitration forum for FINRA member firms and their associated persons to resolve disputes relating to their business. The disputes may be between industry members or between industry members and customers. FINRA administers its arbitration forum under rules promulgated by FINRA and approved by the SEC.⁸⁹

An industry member, either a FINRA member firm or an associated person, is required to arbitrate a dispute with a customer under FINRA's arbitration rules, instead of litigating it in

⁸⁵ Olivera v. Modiano-Schneider, Inc. (1962) Civ. No. 25698, 205 Cal.App.2d 9, 14 ("Findings of arbitrators on questions of fact are final and conclusive and are not subject to judicial review, except under certain circumstances specified by statute, such as fraud, corruption, prejudicial misconduct in procedural matters, exceeding arbitrators' powers, or so imperfectly executing those powers that a mutual, final, and definite award was not made.") (citing *Crofoot v. Blair Holdings Corp.* (1953) 119 Cal.App.2d 156, 184, 185).

⁸⁶ Padussis, 842 F.3d at 339.

⁸⁷ Publicis Commc'n. v. True North Commc'n. Inc., 206 F.3d 725, 727 (7th Cir. 2000).

⁸⁸ E.g., Beckley Oncology Assocs. v. Abumasmah, 993 F.3d 261, 266 (4th Cir. 2021); B.L. Harbert, 441 F.3d 905, 913–14 (11th Cir. 2006).

⁸⁹ FINRA's Series 12000 Rules constitute the Code of Arbitration Procedure for Customer Disputes; the Series 13000 Rules are the Code of Arbitration Procedure for Industry Disputes.

court, if there is a written agreement to arbitrate or the customer requests arbitration.⁹⁰ FINRA's arbitration rules make an arbitration award final and binding and not subject to review or appeal.⁹¹ In FINRA's forum, as the arbitration award in this case stated, an arbitration award is "rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions."⁹² There is no provision in FINRA's rules for review of an arbitration award by a FINRA department, office, or official.⁹³

To facilitate the speedier, less expensive resolution of disputes in its arbitration forum, FINRA has put in place procedures designed to promote prompt payment of arbitration awards after they are issued.⁹⁴ Under FINRA's arbitration rules, "[a]ll monetary awards shall be paid within 30 days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction."⁹⁵ Notably, FINRA requires a member firm or an associated person to file a motion to vacate an arbitration award more quickly than the FAA requires, within 30 days rather than three months.⁹⁶ This prompt payment requirement enhances the efficiency and fairness of FINRA arbitration as a means of dispute resolution. It discourages delay in satisfying an award and may relieve a winning arbitration claimant of the necessity of later turning to other more expensive and time-consuming means of enforcing rights.

⁹² JX-3, at 1.

⁹³ See John Boone Kincaid III, Exchange Act Release No. 87384, 2019 SEC LEXIS 4263, at *6 (Oct. 22, 2019) (arbitration awards are not subject to appeal within FINRA); OHO Order EXP22-01 (ARB220010) (Aug. 4, 2022), at 5, https://www.finra.org/sites/default/files/2022-08/OHO_EXP22-01_ARB220010.pdf (same).

⁹⁴ Keith Patrick Sequeira, Exchange Act Release No. 85231, 2019 SEC LEXIS 286, at *25 (Mar. 1, 2019), pet. for review denied, 816 F. App'x 703 (3rd Cir. 2020).

⁹⁵ The same prompt payment within 30 days is required whether the arbitration involves a dispute between industry members (FINRA Rule 13904(j)) or between an industry member and a customer (FINRA Rule 12904(j)).

⁹⁶ FINRA Rules 12904(j) and 13904 (j). The FAA contains its own enforcement mechanisms to encourage payment of arbitration awards, but the timeline is longer under the FAA than under FINRA's rules. The FAA allows the losing party to serve a motion to vacate in a court of competent jurisdiction up to three months after the issuance of an arbitration award. 9 U.S.C. § 12. Even if the losing party chooses not to pursue a motion to vacate the award, payment could be delayed for three months or even longer, possibly requiring the successful arbitration claimant to file a motion to confirm the award.

In contrast, if a losing party complies with FINRA's rules and pays a monetary award within 30 days, it will be unnecessary for the successful arbitration claimant to litigate a motion to vacate or file a motion to confirm the award. Thus, FINRA's rules contribute to the conservation of judicial resources and the efficiency and fairness of the arbitration process. OHO Order EXP22-01, at 5–8 & n.26.

⁹⁰ FINRA Rules 12200, 12209.

⁹¹ FINRA Rule 12904(b) for customer disputes and FINRA Rule 13904(b) for industry disputes both provide: "Unless the applicable law directs otherwise, all awards rendered under the [FINRA Arbitration] Code are final and not subject to review or appeal." Under FINRA rules, arbitration awards are final unless applicable law directs otherwise. The FAA and state law provide that an arbitration award may be vacated, modified, or corrected on specific, narrow grounds. Submission to arbitration is not a waiver of judicial review, just an agreement that the review to be had is very limited. *Cambridge Legacy Group, Inc. v. Jain*, 407 S.W.3d 443, at *448–49 (Tex. App.– Dallas [5th Dist.] 2013).

4. FINRA's Expedited Suspension Proceedings

Article VI, Section 3(b) of FINRA's By-Laws provides that FINRA may suspend an associated person for a failure to comply with an arbitration award issued pursuant to FINRA's arbitration rules in two circumstances: (i) where no timely motion to vacate or modify has been made or (ii) where such a motion has been made but the "motion has been denied." A timely motion to vacate is a strictly limited exception to the obligation that arbitration awards be paid promptly.⁹⁷

If FINRA becomes aware that a member firm or an associated person has failed to pay an arbitration award within the 30-day window required by FINRA's arbitration rules, FINRA may initiate an expedited suspension proceeding under FINRA Rules 9554 and 9559. A suspension proceeding is not a process for reviewing or altering the underlying award.⁹⁸ Nor is it a proceeding to impose disciplinary sanctions.⁹⁹ Rather, the suspension proceeding is intended to create an incentive to promptly comply with an arbitration award.¹⁰⁰

FINRA Rule 9554(a) authorizes FINRA staff to provide a written notice to an associated person who fails to pay an arbitration award that he or she will be suspended from association with any member if the associated person fails to comply with the award within 21 days of receipt of the suspension notice.¹⁰¹ Under Rule 9554(e), a person served with notice of a proposed suspension may avoid suspension by filing a request for a hearing with the Office of Hearing Officers before the effective date of the suspension. As provided by Rule 9554(d), the hearing request stays the suspension. Rule 9554(c) requires that the hearing request state with specificity all defenses asserted.

If a hearing is requested and a stay obtained, FINRA Rules 9554 and 9559 further provide for an expedited hearing process on the proposed suspension. Rule 9559(f)(4) provides

⁹⁷ Dep't of Enforcement v. Garratt, No. ARB210001, 2021 FINRA Discip. LEXIS 27, at *6–7 (NAC Aug. 31, 2021). In Garratt, the respondent was an associated person of a FINRA member firm who was subject to an arbitration award. He filed a motion to vacate within the 30-day period to avoid suspension but then failed to serve the successful arbitration claimant for 13 months. This was long after service was required under either the FAA or New York law, the two relevant jurisdictions. To establish a defense against a suspension for failure to pay an arbitration award, the NAC held that a respondent must *both* file a motion to vacate within 30 days, as FINRA specifies, *and* serve the motion within the period specified by applicable law. *Id.* at *6–18. As noted earlier, *supra* note 12, at 5, Respondents in this case failed to serve their customer with the petition to vacate the arbitration award by the deadline for service under California law. JX-6.

⁹⁸ OHO Order EXP22-01, at 2, 9–10.

⁹⁹ Keith Patrick Sequeira, 2019 SEC LEXIS 286, at *12–13.

¹⁰⁰ Id. See also OHO Order EXP22-01, at 8.

¹⁰¹ The By-Laws authorize a suspension after an even shorter written notice period than the 21 days under Rule 9554. The By-Laws authorize a suspension after a 15-day notice period. Art. VI, Sec. 3(b).

that a hearing regarding a proposed suspension for failure to pay an arbitration award shall be held within 30 days of a respondent's request for a hearing.¹⁰²

The focus in a suspension proceeding is on whether the respondent should be suspended, not the validity of the arbitration award.¹⁰³ The award is presumed valid.¹⁰⁴ The SEC has flatly stated, "An arbitration award cannot be collaterally attacked by a respondent in a FINRA expedited proceeding."¹⁰⁵ As the SEC has repeatedly explained, "To permit a party dissatisfied with an arbitral award to attack it collaterally for legal flaws in a subsequent disciplinary proceeding would subvert the salutary objective that the NASD's [now FINRA's] [arbitration] resolution seeks to promote."¹⁰⁶

A suspension proceeding may be initiated once a motion to vacate is denied, regardless of whether an appeal is taken. The SEC has specifically rejected the argument that there is no obligation to pay an arbitration award until every possibility of overturning the award is exhausted.¹⁰⁷ "The possibility that the litigant may obtain relief eventually does not change the fact that the attempt to have the award vacated has been denied, which renders the litigant subject to a suspension for failing to pay the award."¹⁰⁸ The SEC has explained, "Honoring arbitration awards is essential to the functioning of the [FINRA] arbitration system."¹⁰⁹ Forcing an arbitration claimant to wait for an extended period of time for satisfaction of an arbitration award owed to the claimant and requiring him to pursue legal avenues to collect the amount due is not in the public interest.¹¹⁰ Once a motion to vacate has been denied, the obligation to pay is

¹⁰⁴ OHO Order EXP22-01, at 9–10.

¹⁰² FINRA Rules 9559(d)(4) and 9235 authorize a Hearing Officer to do all things necessary and appropriate to discharge his or her duties, and FINRA Rule 9559(d)(6) permits a Hearing Officer to extend or shorten time limits for good cause shown. In this case, the date for the hearing was extended beyond 30 days to allow the parties adequate time to work on stipulations and fully brief the legal issue.

¹⁰³ Sequeira, 816 F. App'x 703, 707 ("Any challenge to the award itself, including a claim that the arbitration panel lacked jurisdiction, should have been brought in a court of competent jurisdiction.") (quotations omitted); *See also Kincaid*, 2019 SEC LEXIS 4263, at *13 (Respondent's "recourse for challenging an allegedly erroneous arbitration award would be by seeking to vacate, modify, or correct the award in court under the Federal Arbitration Act.").

¹⁰⁵ Sequeira, 2019 SEC LEXIS 286, at *24; See also Michael David Schwartz, Exchange Act Release No. 81784, 2017 SEC LEXIS 3111, at *22 (Sept. 29, 2017) (respondent in expedited suspension proceeding for non-payment of arbitration award may not collaterally attack the underlying award because that tactic would subvert procedures designed to promote prompt payment); *Michael Albert DiPietro*, Exchange Act Release No. 77398, 2016 SEC LEXIS 1036, at *13 (Mar. 17, 2016) ("An arbitration award cannot be collaterally attacked by a respondent in an FINRA expedited proceeding").

¹⁰⁶ *Tony R. Smith*, Exchange Act Release 43748, 2000 SEC LEXIS 2939, at *13 n.14 (Dec. 20, 2000) (collecting cases).

¹⁰⁷ William J. Gallagher, Exchange Act Release No. 47501, 2003 SEC LEXIS 599, at *13–14 (Mar. 14, 2003).

¹⁰⁸ Sequeira, 2019 SEC LEXIS 286, at *18–19.

¹⁰⁹ *Id.* at 23.

¹¹⁰ Id.

immediate; and FINRA is authorized to commence a suspension proceeding if payment is not forthcoming.¹¹¹

In sum, both federal and California law make clear that arbitration awards are not subject to the same plenary, exhaustive review as judicial decisions. A motion to vacate is permitted, but it is limited to whether the arbitration was infected by corruption or some other unfairness. And once a motion to vacate is denied, payment of the award is due, even under California law. That obligation to pay is only stayed under California law if the losing party obtains a stay or provides an undertaking or bond during the pendency of an appeal. FINRA's prompt payment rule and rules regarding suspension proceedings fit comfortably into this framework. The conditional suspension until payment of an arbitration award is an incentive to comply with an arbitration award. Respondents' insistence that they need not comply with the award and should not be suspended so long as their appeal is pending is inconsistent with the framework for arbitration, inconsistent with the language of Article VI, Section 3(b) of FINRA's By-Laws, and inconsistent with all relevant precedents and guidance.

E. Respondents' Arguments

Respondents' arguments against suspension while their appeal is pending have no merit.

1. Finality Argument

Respondents argue in their opening brief that the literal meaning of FINRA Rule 9554 and its "spirit" or intention "can only be reconciled" by looking to California law to determine the status of Respondents' motion to vacate. They maintain the status of their motion to vacate is not final. Under California law, they assert, if a motion to vacate is on appeal it "has not been denied."¹¹² For that proposition, they mainly rely on *Archdale v. Am. Internat. Specialty Lines Ins. Co.*, a California appellate court decision, which they quote at length.¹¹³ It states in pertinent part, "The basic rule is that while an appeal is pending, a judgment is not final."¹¹⁴ Respondents interpret that decision to mean that their motion to vacate is still, in the words of *Archdale*, "alive."¹¹⁵ At the hearing, Respondents' counsel summarized the California case law as

¹¹¹ *DiPietro*, 2016 SEC LEXIS 1036, at *11 (FINRA is not required to delay suspension proceedings because of an appeal of a decision denying a motion to vacate); *See also* NTM 00-55 n.5 (specifying, "An 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.").

¹¹² Resp. Opening at 4–5.

¹¹³ Archdale v. Am. Int'l. Specialty Lines Ins. Co. (2007) 154 Cal.App.4th 449.

¹¹⁴ Resp. Opening at 5, quoting from Archdale, 154 Cal.App.4th 449, 479.

¹¹⁵ Resp. Opening at 6.

establishing that "an appeal operates to keep alive the case as it existed before the judgment was rendered."¹¹⁶

Respondents are incorrect on many counts.

a. California Law Does Not Govern Application of FINRA's Rules

California law does not govern the interpretation of FINRA's By-Laws, arbitration rules, or rules regarding whom to suspend and when. Those are matters for FINRA to determine, subject to review by the SEC, and, if necessary, subject to further review by a U.S. Court of Appeals. FINRA and the SEC have uniformly held that once a motion to vacate is denied, that denial is sufficient to move forward with a suspension for failure to pay an arbitration award. An appeal does not block a suspension proceeding.¹¹⁷

There is nothing in FINRA's By-Laws and rules to "reconcile." Article VI, Section 3(b) expressly states that a FINRA member firm or associated person can be suspended for failure to pay an arbitration award either where no motion to vacate has been made or where such a motion "has been denied." The language is direct and plain. It does not contain any provision for staying a suspension during the pendency of an appeal.

b. California Case Relied Upon Is Inapposite

In any event, the California case Respondents rely on, *Archdale*, is inapposite. The issue in that case had to do with an insurance company's failure to settle a claim against its insured arising out of a multiple vehicle accident. The insurance company had allegedly unreasonably refused to settle the claim despite one or more offers to settle within the policy limit. The subsequent trial resulted in a judgment against the insurance company for the excess of the policy limit. The insured then had a claim against the insurance company for the excess damages, which the insured transferred to persons injured in the accident. The insurance company appealed the judgment holding its insured liable. Because of the appeal, the judgment against the insured was not finally resolved for two more years. The insured's assignees brought a claim for the excess damages, and the insurance company argued that the limitations period had run on the claim.

The California court rejected the insurance company's argument. The court explained that the cause of action may have accrued on entry of the trial court's judgment, but the resulting damages could not be certain at that point. The appeal could have resulted in a reversal of the judgment against the insured or a modification that reduced the damages to an amount below the policy limit. The cause of action concerning the excess damages could not be brought until it was

¹¹⁶ Tr. 21.

¹¹⁷ *See supra* note 106, at 19.

certain that there were excess damages and, if so, the exact amount of those damages. Accordingly, the court ruled that the limitations period was tolled pending judgment finality.¹¹⁸

While the language quoted by Respondents from *Archdale* is very broad, the case itself turned on specific facts—facts very different from this case. In *Archdale*, the parties needed to know the resolution of the appeal to know whether the insured was held liable and whether the amount of the damages exceeded the policy limit. Only then could injury be pleaded in the separate case concerning excess damages. That is why the court described the trial court judgment as not "final."

Finality for purposes of a claim against an insurance company based on the insured's liability in a separate action has no bearing on this case, where the question is whether for purposes of FINRA's By-Laws and rules Respondents' motion to vacate has been denied. FINRA's By-Laws and rules do not speak of finality. They focus on whether the motion to vacate has been denied.

c. FINRA's By-Laws and Rules Are Not Inconsistent With California Law

In fact, FINRA's By-Laws and rules are in harmony with California law. Both FINRA and California impose an obligation to pay the arbitration award now that Respondents' motion to vacate has been denied, regardless of any appeal and the potential for overturning the judgment confirming the award. The enforceability of a judgment is separate from whether it could be considered "final" in the sense that it can no longer be overturned. In California, "[T]here are many instances in which the taking of an appeal will not stay the enforcement of a judgment."¹¹⁹ The pendency of Respondents' appeal does not bar FINRA from taking steps to enforce the arbitration award or California from taking steps to enforce the judgment confirming the award.

When examining the legal and regulatory framework for arbitration, all this makes sense. Arbitration was never meant to be a dispute resolution process that included the same plenary review as judicial litigation. As discussed above, the grounds for review of an arbitration award are extremely narrow, and, consequently, the likelihood of success on appeal of a judgment confirming an arbitration award is vanishingly small. In the meantime, the longer the successful arbitration claimant must wait to be paid, the greater the possibility that the resources to pay the award may be dissipated. Incentivizing a FINRA member or associated person to pay an arbitration award by a suspension until the award is paid is wholly consistent with the legal and regulatory framework for arbitration.

¹¹⁸ Archdale, 154 Cal.App.4th 449, 457–58, 463–65, 474–79.

¹¹⁹ Lomeli, 108 Cal.App.4th 788, 798.

2. Unnecessary Argument

Respondents argue that FINRA need not be concerned about incentivizing Respondents to pay the award by suspending them until they do, because, according to Respondents, "[T]he investor has broad post-judgment enforcement capabilities available to them in recovering the award from the broker while the appeal is pending¹²⁰ In essence, they say that there is no need for FINRA to take action because Respondents' customer, the successful arbitration claimant, now has in hand an enforceable California state court judgment and can take whatever steps are available to him to collect on that judgment.

Respondents' argument is directly contrary to the fundamental purpose of arbitration—to streamline the resolution of disputes, without requiring recourse to protracted review proceedings and expensive collection efforts. FINRA requires prompt payment of arbitration awards in support of that streamlining. And FINRA's suspension proceedings for failure to pay are in further support. Leaving the customer to his own devices to enforce what is now a California state court judgment is not consistent with the purpose of arbitration or with FINRA's By-Laws and rules.

3. Fifth Amendment Argument

Respondents argue that it would violate their Fifth Amendment due process rights to suspend their licenses at this juncture. They characterize their appeal as "an active vacatur" case and assert, "Fundamental fairness requires that individuals not be deprived of property or liberty based on a judgment that is not final."¹²¹

This argument is rife with error. For the Fifth Amendment to apply, FINRA must be a state actor.¹²² But FINRA is not a governmental entity.¹²³ Rather, it is a private, not-for-profit Delaware corporation formed in 2007, when its predecessor, the NASD, consolidated its regulation and enforcement functions with the similar functions of the New York Stock Exchange.¹²⁴ Its functions grew out of a long history of private membership and private rules. While the SEC oversees FINRA today, and approves its rules, FINRA is not a part of any

¹²⁰ Resp. Opening at 2.

¹²¹ Resp. Opening 5–6.

¹²² Dep't of Enforcement v. Alpine Securities Corp., No. 2019061232601, 2025 FINRA Discip. LEXIS 6, at *115–16 (NAC Mar. 25, 2025).

¹²³ *Id. See also Cody v. SEC*, 693 F.3d 251, 257–58 (1st Cir. 2012).

¹²⁴ Order Approving Proposed Rule Change To Amend the By-Laws of NASD To Implement Governance and Related Changes To Accommodate the Consolidation of the Member Firm Regulatory Functions of NASD and NYSE Regulation, Inc., 72 Fed. Reg. 41,169 (Aug. 1, 2007).

government institution.¹²⁵ In any event, FINRA is required to "provide a fair procedure" when it enforces compliance with its rules.¹²⁶

Respondents' characterization of their appeal of the judgment confirming the arbitration award as "an active vacatur" is also unfounded. Their motion to vacate was denied. Respondents have cited no authority holding or even suggesting that after a motion to vacate an arbitration award has been denied it can still be considered "active." As noted above, under the FAA, there is no provision for further action on a motion to vacate once it is denied. Instead, the party entitled to payment of the award is authorized to pursue a judgment confirming the award.¹²⁷ And under California law, as noted above, despite Respondents' lodging of an appeal, the judgment confirming the arbitration award is an enforceable final judgment.¹²⁸

In any event, Respondents' labeling of their appeal as "an active vacatur" is irrelevant. What matters is that FINRA's By-Laws and rules provide for a stay of a suspension for failure to pay an arbitration award if a timely motion to vacate is filed and pending. If a motion to vacate is denied, however, FINRA's By-Laws and rules authorize a suspension until the arbitration award is paid. There is no concept in FINRA's By-Laws and rules of "an active vacatur."

Finally, fundamental fairness does not require that Respondents be shielded from suspension until all avenues of review are exhausted. The customer who was the successful claimant in arbitration is entitled to fundamental fairness, too. That customer arbitrated the claim in FINRA's forum in the reasonable expectation that the process would be swifter and less expensive than litigation. "Typically, those who enter into arbitration agreements expect that their dispute will be resolved without necessity for any contact with the courts."¹²⁹ As a general rule, an arbitrator's decision is supposed to be final and binding.¹³⁰ And in this case, FINRA's arbitration rules expressly provide that an arbitration award is final and binding.¹³¹

¹²⁵ Saad v. SEC, 873 F.3d 297, 299–300 (D.C. Cir. 2017), *aff'd*, Exchange Act Release No. 86751, 2019 SEC LEXIS 2216 (Aug. 23, 2019), *petition for review denied*, No. 19-1214, 2020 U.S. App. LEXIS 35153 (D.C. Cir. Nov. 6, 2020); *Government Supervised Self-Regulation in the Securities Industry and the Antitrust Laws: Suggestions for an Accommodation*, 62 N.C.L. Rev. 475, 480 (Mar. 1984); *See also* SEC Concept Release Concerning Self-Regulation, 69 Fed. Reg. 71,256, 71,257 (Dec. 8, 2004) (recounting self-regulation's "long tradition in the U.S. securities markets").

¹²⁶ 15 U.S.C. § 78s(b)(1), (2), (7), and (8); *See Cody*, 693 F.3d at 257–58 ("By statute, FINRA was required to give Cody the substance of procedural due process.").

¹²⁷ *See supra* at 12.

¹²⁸ See supra at 9.

¹²⁹ Moncharsh, 3 Cal.4th 1, 9 (citation omitted).

¹³⁰ Id.

¹³¹ FINRA Rule 12904(b).

F. Imposition of Suspension

A suspension is appropriate here, until Respondents either pay the arbitration award or assert another valid defense to a suspension. "Conditional suspension of [a respondent's] association with FINRA members gives [the respondent] an incentive to pay the award . . . and furthers two central purposes of the Exchange Act—serving the public interest and the protection of investors."¹³² By contrast, letting Respondents remain in the industry without paying the arbitration award and without demonstrating any valid defense to the suspension proceeding would undermine the arbitration process and be inconsistent with the goal of providing swift resolution of disputes and prompt satisfaction of awards.

III. Order

Based on the foregoing, and pursuant to Article VI, Section 3(b) of FINRA's By-Laws and FINRA Rule 9559(n), I **SUSPEND** Respondents Michael Barrows and Eric John Ludovico, effective immediately upon issuance of this decision, from associating with any FINRA member in any capacity until they comply with the arbitration award or establish one of the other recognized defenses to a suspension for failure to pay an arbitration award.¹³³

Respondents are **ORDERED** to pay the costs of this proceeding, which include \$1,070.96 for the hearing transcripts plus a \$750 administrative fee, for a total of \$1,820.96. These costs are due and payable upon issuance of this Decision.

Lucinda O. McConathy Hearing Officer

Copies to:

Michael Barrows, Respondent (via email, first-class mail, and FedEx) Eric John Ludovico, Respondent (via email, first-class mail, and FedEx) Seth I. Rubinson, Esq., Rubinson Law for Respondents (via email) Michelle Galloway, Esq., FINRA Enforcement (via email) Jennifer L. Crawford, Esq., FINRA Enforcement (via email)

¹³² Daniel Paul Motherway, Exchange Act Release No. 97180, 2023 SEC LEXIS 753, at *13 (Mar. 21, 2023) (quoting *DiPietro*, 2016 SEC LEXIS 1036, at *24).

¹³³ I have considered all the parties' arguments. With respect to any not discussed here, I have accepted them to the extent they are consistent with this decision and rejected them to the extent they are not.