

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

REGULATORY OPERATIONS,

Complainant,

v.

RESPONDENT

Respondent.

Expedited Proceeding  
No. ARB150039

STAR No. 20150465979

Hearing Officer - KBW

**ORDER DISMISSING EXPEDITED PROCEEDING  
PURSUANT TO FINRA RULE 9559(m)**

On July 28, 2015, FINRA issued a notice of its intent to suspend Respondent from associating with FINRA member firms, based on her failure to pay an arbitration award in the approximate sum of \$419,875.34. This expedited proceeding commenced when Respondent timely requested a hearing pursuant to FINRA Rule 9554, asserting as her defense a *bona fide* inability to pay.

Pursuant to FINRA Rule 9559(m), I issue this Order **DISMISSING** this expedited proceeding based on Respondent's repeated failures to comply with Orders requiring her to provide information to support her asserted defense, as set forth below.

**I. Respondent's Repeated Failures to Comply with Orders Requiring Her To Produce Information to Support Her Defense**

I issued an Order Setting Hearing and Pre-Hearing Schedule on August 19, 2015, that, among other things, set a deadline of September 2, 2015, for Respondent to file a completed financial disclosure statement, along with all required financial information to support her defense ("First Order").

On September 1, 2015, Respondent filed an unopposed motion requesting, among other things, that I extend the September 2 deadline to September 15, 2015. I promptly issued an Order granting this motion ("Second Order"). On September 15, 2015, Respondent made a production of information and documents to Complainant that only partially complied with the Second Order. In connection with her production, Respondent stated, "Enclosed find all that I could pull

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together on such short notice, as this governing body knows I am caring for a terminally ill father.”<sup>1</sup>

Complainant responded to Respondent's incomplete production by sending her a letter dated September 21, 2015. Complainant reiterated in its letter certain questions that Respondent failed to answer in her incomplete production. Complainant also posed several follow-up questions raised by the materials Respondent produced.<sup>2</sup>

On September 28, 2015, thirteen days after the September 15 deadline set by the Second Order, Respondent filed an unopposed motion seeking a “final continuance of the hearing,” again citing the need to care for her gravely ill father. Respondent requested, among other things, that the deadline for providing additional financial disclosure be extended to October 2, 2015. In response, I issued an Order (“Third Order”) which included, among other things, Respondent's requested continuance. Respondent did not comply with the October 2 deadline.<sup>3</sup>

Complainant moved on October 16, 2015, for an Order pursuant to FINRA Rule 9559(m) deeming the notice of suspension issued on July 28, 2015, to be final FINRA action and finding that Respondent has abandoned her defense and waived her opportunity for a hearing (“Motion”). Four days later, Respondent responded with a “Preliminary Answer” to Complainant's Motion. Respondent represented that her father had become increasingly ill, had entered hospice care on October 17, and had died on October 19. Respondent also stated that in light of these developments she would not be able to participate in the hearing scheduled for October 20 and requested a new hearing date.<sup>4</sup>

In response to Complainant's Motion and Respondent's Preliminary Answer, I held a pre-hearing conference on November 3, 2015. During the conference, Respondent stated that she was now prepared to provide most of the information requested by Complainant.<sup>5</sup> At my direction, Complainant agreed to send a letter to Respondent specifying information and documents that she should produce in order for Complainant to complete its assessment of her asserted defense. Also, I set the following schedule, to which both parties agreed: (1) November 24, 2015, was the deadline for Respondent to submit the required information and documents to

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<sup>1</sup> In this Order, I refer to two sets of exhibits. The first set was attached to Complainant's “Motion For An Order Pursuant To Rule 9559(m) Deeming Notice Of Suspension To Be Final FINRA Action [And] Finding That Respondent Has Abandoned Her Defense And Waived Her Opportunity For A Hearing.” I refer to these exhibits by the prefix “Ex.” and the identifying number, as in “Ex. 1.” The second set was attached to Complainant's filing entitled, “Status Update.” I refer to the exhibits attached to the Status Update by the prefix “CX” and the identifying number, as in “CX-1.” Ex. 15 (emphasis in original).

<sup>2</sup> Ex. 16.

<sup>3</sup> Respondent filed two documents that did not relate to her defense of *bona fide* inability to pay and were not responsive to Complainant's September 21 letter. Ex. 20.

<sup>4</sup> Also, she explained that the two documents that she had filed on October 2 demonstrated that the underlying arbitration award was contrary to law. Whether the underlying arbitration award was contrary to law is not an issue in this proceeding. A respondent in an expedited proceeding may not attack the merits of the underlying arbitration award. *Robert Tretiak*, 56 S.E.C. 209, 221 (2003).

<sup>5</sup> Tr. at 13.

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Complainant; (2) December 14, 2015, was the deadline for the filing of pre-hearing submissions; and (3) December 22, 2015, was the hearing date.<sup>6</sup>

As agreed during the conference, Complainant served Respondent on November 4, 2015, with a letter specifying the information and documents she should produce.<sup>7</sup> On November 6, 2015, I issued an Order identifying the information and documents that Respondent was required to provide to Complainant and confirming the schedule that I had set during the conference, including Respondent's November 24 deadline for serving Complainant with the required information and documents ("Fourth Order"). The Fourth Order, like the earlier Orders, warned Respondent that any failure "to comply with any order . . . requiring production of information in support of her defense, may be deemed an abandonment of Respondent's defenses to the notice [of intent to suspend] and a waiver of any opportunity for a hearing, in which case the notice will be deemed to be final FINRA action."

In violation of the Fourth Order, Respondent failed to provide responses to Complainant on or before the November 24 deadline. After allowing Respondent a grace period of one week, Complainant sent an email on December 1, 2015, to Respondent noting the Fourth Order's November 24 deadline and asking Respondent to provide an update regarding the status of her response.<sup>8</sup> Respondent did not reply. Complainant represents that on December 3, 2015, it telephoned Respondent and left a voicemail repeating the request for a status update. Complainant further represents that, as of December 4, 2015, Respondent had not responded to either the email or the voicemail and has not complied with the Fourth Order.<sup>9</sup>

On December 4, 2015, Complainant renewed its Motion based on Respondent's repeated failures to comply with Orders directing her to provide to Complainant a complete financial disclosure statement, along with all required information to support her defense ("Renewed Motion").<sup>10</sup> Respondent has not opposed Complainant's Renewed Motion.

## **II. FINRA Rule 9559(m) Mandates That The Notice of Suspension Shall Be Deemed Final FINRA Action**

FINRA Rule 9559(m) provides that a respondent's failure "to comply with any order of the Hearing Officer . . . requiring production of information to support any defense to the notice or petition that respondent has raised, shall be considered an abandonment of the respondent's defense and waiver of any opportunity for a hearing." FINRA Rule 9559(m) further provides that the notice of suspension "shall be deemed to be final FINRA action."

The reason for Rule 9559(m) is simple. In a case like this, where a respondent has failed to pay an arbitration award but asserts that she should be excused from paying because of an

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<sup>6</sup> Tr. at 34-39.

<sup>7</sup> CX-1; CX-2.

<sup>8</sup> CX-4.

<sup>9</sup> Status Update, at 3.

<sup>10</sup> Complainant's Renewed Motion was set forth in the filing entitled, "Status Update."

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inability to pay, the burden of proof as to the respondent's defense rests on the respondent. If a respondent fails to provide the information necessary to support the defense, then no hearing will be required.

### **III. Conclusion**

For the foregoing reasons, Complainant's Renewed Motion is **GRANTED**. I find that Respondent has abandoned her defense and waived her opportunity for a hearing. This expedited proceeding is dismissed, and the hearing scheduled for December 22, 2015, is cancelled. The Notice of Suspension issued to Respondent on July 28, 2015, pursuant to FINRA Rule 9554, is deemed to be the final FINRA action in this matter. Respondent's suspension pursuant to the Notice is effective immediately.

**SO ORDERED.**

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Kenneth Winer  
Hearing Officer

Dated: December 18, 2015