

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

GIOVANNI ANTONIO MALATESTA  
(CRD No. 4577915),

Respondent.

Expedited Proceeding  
No. ARB200025

STAR No. 20200675823

Hearing Officer–MJD

**EXPEDITED DECISION**

January 13, 2021

**Respondent failed to pay an arbitration award and failed to demonstrate that he had a bona fide inability to pay the award. Respondent is suspended from associating with any FINRA member firm in any capacity.**

*Appearances*

For the Complainant: Michael P. Manning, Esq., and Loyd Gattis, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: Giovanni Antonio Malatesta, pro se.

**DECISION**

**I. Introduction**

Respondent Giovanni Antonio Malatesta failed to pay a FINRA arbitration award (“Award”) against him and in favor of his former employer firm, Wells Fargo Clearing Services, LLC (“Wells Fargo” or “Firm”). As a result, FINRA sent a Notice of Suspension pursuant to Rule 9554, notifying Respondent he would be suspended from associating with any FINRA member firm on August 21, 2020, unless he paid the Award or filed a request for hearing asserting a recognized defense. Respondent filed a Request for Hearing asserting the defense of bona fide inability to pay, staying the effective date of the suspension. On October 26 and 29, 2020, I held a hearing via videoconference pursuant to FINRA Rule 9559.

At the hearing, the evidence demonstrated that, at the time the Award became due, Respondent could afford to make a meaningful contribution towards payment of the Award, but he did not do so. For the reasons set forth below, I find that Respondent did not prove his defense of inability to pay. I suspend Respondent from associating with any FINRA member firm in any capacity until he produces sufficient documentary evidence to FINRA showing that (1) the Award has been paid in full; (2) Respondent and Wells Fargo have agreed to settle the matter

and he is in compliance with the settlement terms; or (3) Respondent has filed a petition in a United States Bankruptcy Court, or a United States Bankruptcy Court has discharged the debt representing the Award.

## II. Regulatory Framework

Under FINRA rules governing arbitrations, “[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.”<sup>1</sup> If an associated person fails to comply with an arbitration award, FINRA may suspend him “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> FINRA Rule 9554 establishes an expedited procedure for FINRA, under certain circumstances, to suspend an associated person for nonpayment of an arbitration award. The Rule authorizes FINRA to send 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>3</sup>

Once served with a notice of suspension, a respondent may request a hearing to assert defenses to the FINRA action.<sup>4</sup> A timely request for a hearing stays the imposition of the suspension.<sup>5</sup> FINRA recognizes the following defenses: (1) the arbitration award has been paid in full; (2) the parties have agreed to installment payments of the award, or have otherwise agreed to settle, and the respondent is not in default of the settlement; (3) the award has been vacated by a court; (4) a motion to vacate or modify the award is pending in a court; and (5) the respondent has a bankruptcy proceeding pending in a U.S. Bankruptcy Court, or a U.S. Bankruptcy Court has discharged the award.<sup>6</sup>

A respondent may also assert a bona fide inability to pay an arbitration award issued in an industry dispute.<sup>7</sup> “To prevail on an inability-to-pay defense a respondent must demonstrate that he is unable to make some meaningful payment toward the award from available assets or

---

<sup>1</sup> FINRA Rule 13904(j).

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

<sup>3</sup> FINRA Rule 9554(a).

<sup>4</sup> FINRA Rule 9554(e).

<sup>5</sup> FINRA Rule 9554(d).

<sup>6</sup> *Regulatory Operations v. Pincus*, No. ARB180031, 2019 FINRA Discip. LEXIS 7, at \*4-5 (OHO Feb. 7, 2019); FINRA By-Laws, Art. VI, Section 3(b); NASD Notice to Members 00-55, at 2 (Aug. 2000), <http://www.finra.org/industry/notices/00-55>.

<sup>7</sup> *Pincus*, 2019 FINRA Discip. LEXIS 7, at \*5, citing *William J. Gallagher*, Exchange Act Release No. 47501, 2003 SEC LEXIS 599, at \*9 (Mar. 14, 2003).

income.”<sup>8</sup> A respondent must also establish that at no time after the award became due did he have the ability to make a meaningful contribution to the award.<sup>9</sup>

A respondent bears the burden of proving an inability to pay an award.<sup>10</sup> The Securities and Exchange Commission has stated that “[b]ecause the scope of [the respondent’s] assets is peculiarly within his knowledge . . . [the respondent] should properly bear the burden of adducing evidence with respect to those assets.”<sup>11</sup> FINRA is entitled to make a searching inquiry into the respondent’s assertion of inability to pay.<sup>12</sup> The defense may be rejected when the evidence provided by a respondent is insufficient or incomplete.<sup>13</sup>

### III. Findings of Fact

#### A. The Award

Respondent entered the securities industry in 2002 when he associated with a FINRA member firm.<sup>14</sup> From April 28, 2017, to December 24, 2019, he was registered as a general securities representative with Wells Fargo.<sup>15</sup> In April 2020, Respondent registered with Cetera Investment Services, LLC (“Cetera”), where he remained registered at the time of the hearing.<sup>16</sup>

On April 28, 2017, the day he joined Wells Fargo, Respondent signed a promissory note for \$118,243 in favor of the Firm, payable over a 52-month term at an annual interest rate of 2.10 percent.<sup>17</sup> Respondent testified that he used \$82,000 from the proceeds of the loan towards the purchase of a home that he owns with his wife in Argyle, Texas, in August 2019.<sup>18</sup> In connection

---

<sup>8</sup> *Michael Albert DiPietro*, Exchange Act Release No. 77398, 2016 SEC LEXIS 1036, at \*16 (Mar. 17, 2016) (internal quotations omitted).

<sup>9</sup> *Regulatory Operations v. Grady*, No. ARB170025, 2017 FINRA Discip. LEXIS 51, at \*4 (OHO Dec. 14, 2017); *Dep’t of Enforcement v. Tretiak*, No. C02980085, 2000 NASD Discip. LEXIS 35, at \*20 (OHO Mar. 10, 2000), *aff’d*, 2001 NASD Discip. LEXIS 1 (NAC Jan. 23, 2001), *aff’d*, *Robert Tretiak*, Exchange Act Release No. 47534, 2003 SEC LEXIS 653 (Mar. 19, 2003).

<sup>10</sup> *Tretiak*, 2003 SEC LEXIS 653, at \*220; *Gallagher*, 2003 SEC LEXIS 599, at \*9; *Pincus*, 2019 FINRA Discip. LEXIS 7, at \*5.

<sup>11</sup> *Bruce M. Zipper*, Exchange Act Release No. 33376, 1993 SEC LEXIS 3525, at \*8 (Dec. 23, 1993).

<sup>12</sup> *Regulatory Operations v. DiPietro*, No. ARB140066, 2015 FINRA Discip. LEXIS 37, at \*7 (OHO June 8, 2015), *aff’d*, 2016 SEC LEXIS 1036; *Gallagher*, 2003 SEC LEXIS 599, at \*9.

<sup>13</sup> *Pincus*, 2019 FINRA Discip. LEXIS 7, at \*7 n.22, citing *Gallagher*, 2003 SEC LEXIS 599, at \*12.

<sup>14</sup> Joint Exhibit (“JX-”) 1, at 7.

<sup>15</sup> Parties’ Stipulations (“Stip.”) ¶ 1. Wells Fargo filed a Uniform Termination Notice for Securities Industry Registration (Form U5) on December 24, 2019, stating that Respondent was discharged because he “[d]id not meet management’s performance expectations with respect to attendance and accountability.” JX-1, at 4.

<sup>16</sup> JX-1, at 1-4.

<sup>17</sup> Hearing Transcript (“Tr.”) 44; JX-2, at 1; Respondent’s Exhibit (“RX-”) 4.

<sup>18</sup> Tr. 73; Stip. ¶ 16.

with the home purchase, Respondent took out a mortgage in the amount of \$404,500.<sup>19</sup> Respondent and his wife have two children living with them in the home.<sup>20</sup>

In March 2020, three months after Wells Fargo discharged Respondent, the Firm filed a FINRA arbitration claim alleging Respondent had defaulted on the note in December 2019 and that he owed the Firm \$99,052,<sup>21</sup> plus interest at 5.10 percent per year.<sup>22</sup> On June 12, 2020, the arbitrator executed an Award in the amount of \$99,052, plus interest at 5.10 percent per year, against Respondent and in favor of Wells Fargo.<sup>23</sup> The Award was served on Respondent on June 12, 2020.<sup>24</sup>

Because Respondent did not pay the Award, on July 31, 2020, FINRA sent him a Notice of Suspension pursuant to FINRA Rule 9554.<sup>25</sup> On August 14, 2020, Respondent timely filed a Request for Hearing. Respondent has not paid the Award, nor has he (1) entered into a fully executed, written settlement agreement with Wells Fargo to pay the Award; (2) filed a bankruptcy petition; or (3) filed a motion to vacate the Award.<sup>26</sup>

## **B. Respondent's Attempt to Collaterally Attack the Award**

Respondent testified that in 2017 Wells Fargo recruited him away from a promising job at a former employer, another FINRA member firm, then failed to give him the opportunity to succeed in his new job.<sup>27</sup> Respondent testified that the arbitration was unfair, and he should not owe Wells Fargo anything. Respondent also testified that, if there were an Award, it should have been for approximately \$65,000, not \$99,052.<sup>28</sup> A respondent cannot collaterally attack an arbitration award,<sup>29</sup> and Respondent made no effort to defend himself in the underlying

---

<sup>19</sup> Tr. 97; JX-8, at 1.

<sup>20</sup> Tr. 34, 78. Respondent also has a daughter from a previous marriage who is over the age of 18 and lives with Respondent. Tr. 78, 125.

<sup>21</sup> Figures in this Decision are rounded to the nearest dollar.

<sup>22</sup> JX-2, at 1.

<sup>23</sup> JX-2. Respondent did not file an Answer to the arbitration claim or otherwise appear at the arbitration proceeding. JX-2.

<sup>24</sup> Stip. ¶¶ 5, 7; JX-4.

<sup>25</sup> Stip. ¶¶ 9-10, 12; JX-5.

<sup>26</sup> Tr. 126; Stip. ¶¶ 9, 13-15. Respondent testified that he has not attempted to negotiate a settlement or a payment plan with Wells Fargo since the Award was entered against him. Tr. 126.

<sup>27</sup> Tr. 32-33, 35-39.

<sup>28</sup> Tr. 46, 50-51, 148-49.

<sup>29</sup> *John G. Pearce*, Exchange Act Release No. 37217, 1996 SEC LEXIS 1329, at \*5 (May 14, 1996) (an associated person may not collaterally attack an arbitration award in a disciplinary proceeding brought for a failure to pay the award).

arbitration proceeding. Accordingly, I have not considered Respondent's arguments related to the underlying arbitration proceeding.

### **C. Respondent's Present Financial Condition**

Respondent claims that he does not have the ability to pay the Award because Wells Fargo fired him in December 2019, and he has not earned any income since then. Respondent's wife is not employed.<sup>30</sup>

Respondent testified that since early 2020 the coronavirus pandemic has reduced his employment opportunities.<sup>31</sup> At the time of the hearing, Respondent was registered with Cetera, which had promised him a job in its banking affiliate. The job fell through, according to Respondent, as a result of the pandemic and this proceeding.<sup>32</sup>

#### **1. Respondent's Assets, Liabilities, and Net Worth**

Respondent provided a Statement of Financial Condition ("SFC") dated September 20, 2020.<sup>33</sup> In this document, he provided information about his assets, liabilities, net worth, income, expenses, and cash flow. It is of little direct utility because for some entries Respondent conflated liabilities with expenses and for others he provided monthly rather than annual figures for expenses. However, after carefully evaluating the evidence presented, including estimates contained in the SFC, exhibits entered into evidence, and Respondent's hearing testimony, I make the following findings.

##### **a. Assets**

According to Respondent, his assets total \$539,375, which is made up of two items: his family residence, which Respondent valued at \$486,500, and \$52,875 in a bank account held solely in his name.<sup>34</sup>

Respondent testified that he arrived at \$486,500 as the value of his residence by adding the \$404,500 mortgage amount and the \$82,000 down payment he and his wife made, using the

---

<sup>30</sup> Tr. 109; JX-6, at 3. Respondent also testified that he did not receive any unemployment benefits after Wells Fargo discharged him. Tr. 109.

<sup>31</sup> Tr. 57-58.

<sup>32</sup> Tr. 58-59.

<sup>33</sup> JX-6. The Office of Hearing Officers provided Respondent with a standard Statement of Financial Condition form that he was to complete and provide to Enforcement. The form contains instructions and identifies what supporting documents he was to give Enforcement to demonstrate his financial situation.

<sup>34</sup> It is not clear how Respondent arrived at \$52,875 as the available balance in the bank account. The daily balance in the account never fell below \$53,105 since the Award was issued on June 12, 2020. *See* JX-7, at 23-27.

proceeds of the Wells Fargo loan.<sup>35</sup> According to an appraisal made at the time of purchase in August 2019, however, the home is worth \$500,000, not \$486,500.<sup>36</sup>

The parties submitted copies of Respondent's monthly bank account statements covering the one-year period from September 14, 2019, to September 14, 2020. The statements show that the balance in the account was \$53,936 at the time of the Award, which declined to \$53,503 as of September 14, 2020, the latest date for which there is a statement balance.<sup>37</sup>

According to the SFC, Respondent has no Individual Retirement Account, Keough, or 401(k) accounts. He provided no estimated value for furniture and other household goods.<sup>38</sup> Respondent and his wife do not own an automobile. He borrows his father's car when the need arises.<sup>39</sup>

Using the 2019 appraisal of Respondent's home, I find that the home is valued at \$500,000, and Respondent has \$53,503 in his bank account as of September 14, 2020.

### **b. Liabilities**

Respondent has just one significant liability—the mortgage on his residence, the balance of which he says is \$404,500. (Respondent identified both the \$404,500 mortgage amount plus monthly mortgage payments of \$2,920 as liabilities, the latter of which should properly be listed under monthly expenses.) However, because Respondent and his wife have owned the property for more than one year, the current principal liability on the loan has been reduced to \$401,761, and is not \$404,500 as Respondent claims.<sup>40</sup> Using the \$500,000 appraisal figure, Respondent and his wife's equity in the property is approximately \$98,239.<sup>41</sup>

Besides the mortgage, Respondent listed another liability—a \$857 credit card debt.<sup>42</sup> Respondent also claimed as a liability a debt of \$5,098 owed to MBNA America Bank, N.A. (even though he listed this amount as an expense).<sup>43</sup> However, this debt dates from at least 2006,

---

<sup>35</sup> Tr. 73.

<sup>36</sup> At the time of Respondent's purchase, a contemporaneous appraisal valued the property at \$500,000. Tr. 95-96; Complainant's Exhibit ("CX-") 2, at 1.

<sup>37</sup> JX-7, at 23, 27.

<sup>38</sup> JX-6, at 1.

<sup>39</sup> Tr. 127-28.

<sup>40</sup> Tr. 98; JX-8, at 1.

<sup>41</sup> Respondent did not dispute the approximate value of the equity in the property. *See* Tr. 99.

<sup>42</sup> Tr. 107; JX-6, at 2. On the SFC, Respondent stated that he was not able to obtain a copy of a statement evidencing the \$857 debt because the credit card account is closed. JX-6, at 6.

<sup>43</sup> JX-6, at 4.

and the current creditor informed Respondent that it would not pursue collection.<sup>44</sup> Accordingly, I have not considered the \$5,098 amount as a liability (or an expense).

According to Respondent's SFC, Respondent has no outstanding auto loans, student debt, judgments entered against him, unpaid taxes, or other obligations, other than those relating to the home mortgage and the \$857 credit card debt.<sup>45</sup> These two liabilities total \$402,618.

### **c. Net Worth**

Respondent did not calculate his net worth on the SFC.<sup>46</sup> However, based on the above valuation of assets and liability, I find that, for the purpose of determining Respondent's ability to make a meaningful contribution toward satisfaction of the Award, he has a positive net worth of \$150,885.

## **2. Respondent's Income, Expenses and Cash Flow**

On his SFC, Respondent set forth his income and estimated monthly expenses (although he had also included some expenses as liabilities).

### **a. Income**

According to Respondent, neither he nor his wife is currently working and therefore have no earned income.<sup>47</sup> In 2017 and 2018, respectively, Respondent and his wife had an adjusted gross income of \$81,507 and \$82,711 according to their federal tax returns.<sup>48</sup> Respondent did not produce a copy of his 2019 federal tax return because he and his wife have not filed it yet. He and his wife filed an application for automatic extension of time to file their return.<sup>49</sup> Respondent did not state how much money he earned in 2019.<sup>50</sup> According to a July 2019 pay stub from Wells Fargo, Respondent had earnings of \$37,130 through July 31, 2019 (or \$5,304 per month).<sup>51</sup> Extrapolating this monthly figure through December 4, 2019, I calculate that Wells

---

<sup>44</sup> Tr. 103-04; CX-4, at 1.

<sup>45</sup> JX-6, at 2.

<sup>46</sup> See JX-6, at 2. At the hearing, Respondent conceded that his net worth was at least \$136,135, after accounting for the current balance owed on the mortgage, and without using the \$500,000 property appraisal figure. Tr. 108-09.

<sup>47</sup> JX-6, at 6.

<sup>48</sup> RX-3, at 1; RX-9, at 1.

<sup>49</sup> Tr. 112-13; RX-7.

<sup>50</sup> Section II.A of the SFC instructs respondents to state annual income for the year *before* the year in which the award was issued and for the year in which the award was issued.

<sup>51</sup> RX-6. On the SFC, however, Respondent stated that his monthly salary at Wells Fargo through December 4, 2019, was \$3,250 per month. Based on his testimony, I understand Respondent to mean that he received an average of \$3,250 per month in take home pay, after withholding of taxes and other items. Tr. 76; JX-6, at 3.

Fargo paid Respondent approximately \$60,000 in 2019. (Respondent testified that he did not receive any unemployment benefits after Wells Fargo discharged him.<sup>52</sup>)

According to the SFC, he receives no dividend or interest payments, and no income from annuities, pensions, rents, or from sales of any assets that he may have owned in the past.<sup>53</sup>

Respondent listed his father and late mother as sources of financial support to his family. His mother left him \$10,000 in 2020.<sup>54</sup> His father, according to Respondent, supports the family by paying utility and other bills, which Respondent did not quantify on the SFC or at the hearing.<sup>55</sup> Respondent testified that he uses his father's credit card to pay these bills.<sup>56</sup>

### **b. Expenses**

On the SFC, Respondent listed as monthly expenses the following items: the mortgage payment of \$2,920 (which includes taxes and insurance<sup>57</sup>); food for a "family of 5"<sup>58</sup> (\$550); utilities (\$650); automobile (\$400)<sup>59</sup>; and homeowners association fees (\$94).<sup>60</sup> Respondent estimated that his family spends \$10,120 per year on medical services, or approximately \$843 per month.<sup>61</sup> He has no expenses for childcare, education, attorneys or other professional fees, and repayment of loans (besides the Award and the mortgage).<sup>62</sup>

I find that Respondent's expenses as set forth in the SFC are reasonable. Based on Respondent's estimates (and using \$440, instead of \$550, as the family's monthly food

---

<sup>52</sup> Tr. 109.

<sup>53</sup> JX-6, at 3.

<sup>54</sup> Tr. 75-76; JX-6, at 3. Respondent's bank account shows a deposit of \$10,000 on March 6, 2020. JX-7, at 13.

<sup>55</sup> Tr. 112, 124-26. Respondent testified that he did not quantify the amount of assistance he received from his father because he expected to address the matter at the hearing. But at the hearing, he did not provide a monthly figure. Tr. 125-26.

<sup>56</sup> Tr. 126.

<sup>57</sup> The monthly mortgage of \$2,920 is comprised of \$1,958 in principal and interest and \$962 in property taxes and insurance premiums. JX-6, at 2; JX-8, at 1.

<sup>58</sup> Respondent argues that it is reasonable to include expenses he paid on behalf of his eldest daughter because "she still has a bedroom here, and she still calls it her home." Tr. 153-54. I have reduced Respondent's estimate of monthly food expenses of \$550 by 20 percent to exclude Respondent's adult daughter. I therefore find that Respondent's food expenses are \$440 per month.

<sup>59</sup> Respondent estimated automobile expenses at \$400 per month based on the number of times he or his wife borrow his father's car and the distances they drive for various family chores and events. JX-6, at 7.

<sup>60</sup> Respondent testified that the homeowners association fees are \$1,100 per year, or \$92 per month. Tr. 78-79, 110.

<sup>61</sup> Tr. 111; JX-6, at 4, 7. For example, as evidence of the family's medical expenses, Respondent submitted copies of medical bills for services from March to May 2019 totaling over \$4,000. Although he did not submit recent or current receipts for medical services and expenses or insurance premiums, I find that \$843 is a reasonable estimate for medical expenses for a family of four. Respondent has not demonstrated how he covered these bills without decreasing the funds in his bank account.

<sup>62</sup> JX-6, at 4.



expenses), I find that Respondent has monthly expenses and disbursements of approximately \$5,347.

### **c. Monthly Cash Flow**

Based on the evidence presented at the hearing, and considering that Respondent and his wife are unemployed, I find that Respondent has a monthly negative cash flow of \$5,347.

### **3. Respondent Provided Incomplete Information About his Financial Condition**

A review of the activity in the bank statements Respondent produced suggests that he had other assets or sources of money that he did not disclose to pay family expenses. Considering that Respondent was not employed, the balance in the account declined little from the time he was discharged by Wells Fargo in December 2019 (\$57,579) to September 2020 (\$53,503), even accounting for the \$10,000 deposit in March 2020 and his use of his father's credit card to pay utility bills.<sup>63</sup> The statements show that, besides the \$10,000 from Respondent's late mother, there were no other deposits into the account, even during 2019 when Respondent was earning a salary from Wells Fargo.

There was little activity in the account in some months. From June 12 to July 13, 2020, Respondent made three purchases totaling \$19 and received a \$23 credit for a returned item. The balance in his only disclosed bank account therefore grew by \$4 during the month.<sup>64</sup> The most recent statement produced at the hearing, for the period August 14 to September 14, 2020, shows that the account balance increased by \$343. Respondent used a debit card for five purchases totaling \$238 and the account was credited \$581 for returned merchandise.<sup>65</sup> At the hearing, Respondent acknowledged that he did not use only the bank account to pay for family expenses during the three most recent months since the Award, as reflected in the statements—June 14 to September 14, 2020.<sup>66</sup> The balances in the bank statements do not reflect that Respondent used the account, for example, to feed his family, pay utilities, incur the costs of borrowing an automobile, and other usual daily expenses.

## **IV. Conclusion**

Notwithstanding Respondent's negative cash flow, I conclude that Respondent failed to prove that he is unable to make a meaningful contribution toward satisfaction of the Award, for which he had the burden of proof. Based on the evidence presented, I find that Respondent failed to establish his defense of a bona fide inability to pay. He had a positive net worth of

---

<sup>63</sup> JX-7, at 7, 27.

<sup>64</sup> JX-7, at 23.

<sup>65</sup> JX-7, at 27. Other monthly bank statements, covering the period before the Award, show more activity. For example, the statement for the period November 15 to December 12, 2019, reflects 10 debit card expenses totaling \$3,018, and credits of nearly \$1,590 for returned items. JX-7, at 7. From April 14 to May 13, 2020, Respondent used the debit card for approximately 25 purchases totaling \$1,484 and made one return for a \$21 credit. JX-7, at 17-18.

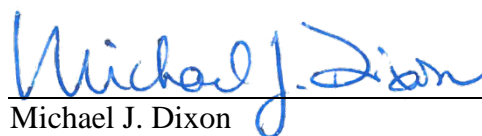
<sup>66</sup> Tr. 91.

approximately \$150,000 at the time of the Award, some portion of which could have been used as a payment towards the Award.

Honoring arbitration awards is essential to the functioning of FINRA's arbitration system. Requiring associated persons to abide by awards enhances the effectiveness of the arbitration process.<sup>67</sup> Because of Respondent's failure to meet his burden of proof, I find it appropriate to suspend Respondent from association with any FINRA member until he meets one of the conditions stated below.

Under Article VI, Section 3(b) of FINRA's By-Laws and Rule 9559(n), Respondent Giovanni Antonio Malatesta is suspended from associating with any FINRA member in any capacity, effective immediately. The suspension shall remain in effect until Respondent produces sufficient documentary evidence to FINRA showing one of the following circumstances: (1) the Award has been paid in full; (2) Respondent and the Firm have agreed to settle the matter (and he is in compliance with the settlement terms); or (3) Respondent has filed a petition in a U.S. Bankruptcy Court, or a U.S. Bankruptcy Court has discharged the debt representing the Award. Upon such showing, the suspension shall automatically terminate.<sup>68</sup>

In addition, Respondent is ordered to pay costs of \$2,073.55, which includes an administrative fee of \$750 and the hearing transcript cost of \$1,323.55.<sup>69</sup> These costs are due and payable immediately upon the issuance of this Decision.



---

Michael J. Dixon  
Hearing Officer

Copies to:

Giovanni Antonio Malatesta (via email, overnight courier, and first-class mail)

Michael P. Manning, Esq. (via email)

Loyd Gattis, Esq. (via email)

Jennifer L. Crawford, Esq. (via email)

---

<sup>67</sup> *Michael David Schwartz*, Exchange Act Release No. 81784, 2017 SEC LEXIS 3111, at \*18 (Sept. 29, 2017).

<sup>68</sup> Respondent must also pay the costs of the hearing before the suspension terminates.

<sup>69</sup> I have considered and reject without discussion all other arguments of the parties.