

Daniel Paul Motherway

[REDACTED]
Marietta, GA 30064
[REDACTED]

7/28/20

Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Mail Stop 1090 Room #10915
Washington D.C. 20549

Dear Office of the Secretary:

Please accept this as an application for appeal of FINRA Expedited Case ARB200006
STAR No. 20200655490.

The grounds of my appeal are as follows:

As indicated on page 3 of Hearing Officer Daniel D. McClain's decision, he reiterates the standard for proving an inability-to-pay defense. Specifically, "He must show that he cannot reduce his living expenses, borrow funds, or otherwise "make some meaningful payment toward the settlement of the award from *available assets or income*, even if he could not pay the full amount of the award." I have been unemployed since July 2019. [REDACTED] I met every standard as required.

Hearing Officer McClain's decision states on page 4 that "Instead, the evidence demonstrated that he had sufficient assets and income available to him to make a meaningful payment to UBS." In fact, I have [REDACTED]

Hearing Officer McClain's decision states on page 5 that " The SFC lists sufficient assets and income, then, for Motherway to make a meaningful payment toward the Award. Indeed, Motherway does not dispute this." In fact, this is a gross misrepresentation and I do dispute this, which was the basis for my requesting a hearing based on FINRA 9554, inability-to-pay.

Hearing Officer McClain makes a leap of logic on page 7. He states, that since my wife transferred monies from her bank account into mine and since we file a joint tax return; that "suggesting that he and his wife regularly commingled assets". As defined by Merriam-Webster, commingled: to blend thoroughly into a harmonious whole or to combine into a common fund or stock. My wife and I have since the day we were married maintained separate checking and savings accounts. To

“suggest” otherwise is wholly incorrect. The mere filing of a joint return does not represent any commingling. As stated during the hearing, my wife sent me money to pay my credit card bills. Further illustrating my inability-to-pay defense. Seemingly ignored by Hearing Officer McClain.

Hearing Officer McClain continues on page 7 of his decision to discuss financial transactions that are specifically out of the scope of FINRA 9554 and my burden of proof. He cites transfer of funds from my wife to myself. He also discusses the transfer and sale of a property in New Jersey. As well as a purchase of a property in Georgia by my wife. All of these items are specifically outside of FINRA 9554 as they occurred prior to the date of the award. These are irrelevant to my burden of proof and should not have been of consideration based on FINRA 9554.

Finally, Hearing Officer McClain states on page 8 of his decision, “In short, Motherway offered no evidence at the hearing that his substantial household resources were truly unavailable to him to make a meaningful payment toward the Award. He offered no evidence that he attempted to borrow funds from his wife. Nor did he offer any evidence that she would refuse or be unable to provide him with that money. This is fatal to his inability-to-pay defense.” In fact, I stated multiple times that I could not borrow the funds from *anyone*. This *anyone*, would be any human including my wife. Hearing Officer McClain’s having ignored this statement is no fault of mine and certainly not ‘fatal’, as I stated this several times during the hearing. Hearing Officer McClain at no time asked me specifically if *anyone* either included or excluded my wife. My statement was clear and *anyone* includes my wife.

The Statement of Financial Condition as required by FINRA demands disclosure of my spouse’s assets and liabilities. At no point during disclosure of, or discussion of these assets did I state that these were subject to my enjoyment. As a point of fact, these assets are *not* subject to my enjoyment. Their mere existence does not and should not infer rights as they are titled in her name and hers only.

I clearly satisfied my burden of proof in this matter. As required by FINRA 9554, my inability-to-pay defense should be affirmed. The Hearing Officer’s decision should be overturned. That is my request based on the information provided.

Whatever your decision, please accept my sincere thanks for your time and consideration of my request. I would be happy to furnish additional information.

Office of the Secretary

7/28/20

Page 3

Sincerely,

A handwritten signature in black ink, appearing to read 'DPM', with a long horizontal flourish extending to the right.

Daniel Paul Motherway

Enclosure

CC: Alan Lawhead, FINRA