

1 Daniel Motherway

2 Marietta, GA

4 US SECURITIES AND EXCHANGE COMMISSION

6 IN THE MATTER OF THE APPLICATION OF
7 DANIEL PAUL MOTHERWAY
8 FOR REVIEW OF ACTION TAKEN BY
9 FINRA

Admin. Proc. File No 3-19897

REPLY BRIEF IN SUPPORT OF APPLICATION

10 This is a reply brief in response to FINRA's Brief in Opposition to the
11 Application for Review and in support of my application for appeal of FINRA Expedited Case
12 ARB200006 STAR No. 20200655490. An index has been filed in this matter on 8/12/20 by
13 FINRA. This brief will enumerate the many reasons why the decision in the Expedited Case was
14 incorrect and should be reversed. My inability to pay defense should be supported by the SEC
15 based upon FINRA Rule 9554 and its requirements.

17 FINRA's Department of Enforcement in replying to my brief in support dated
18 October 2, 2020, fails to address several important details in the decision rendered by Hearing
19 Officer McClain. Certainly, the department is entitled to its own opinion, however not to its own
20 version of the facts as purported in its reply.

22 FINRA does not dispute that Motherway has no employment, no income, no
23 assets and in excess of \$1.3 million in debt.

24 FINRA bases its entire denial of Motherway's inability to pay defense on a single
25 claim. That Motherway has the ability to pledge, borrow, invade, claim and withdraw funds
26 owned by Tara Baquero. As stated during the hearing and in Motherway's application to the
27 SEC, Tara Baquero will not under any circumstance allow Motherway to pledge, borrow, claim,

1 co-title or access any of her assets. This statement alone satisfies FINRA's assertion otherwise.
2 This statement has been ignored by both the Hearing Officer and FINRA in its opposition.
3 FINRA does not dispute that all assets listed on the Financial Disclosure as required belong to
4 Tara Baquero only. In its opposition, FINRA includes financial information such as home
5 sales/purchases, car purchases, attorney fees and monthly bill payments that are specifically out
6 of the scope of its own rule 9554, as they occurred prior to the date of the award. These
7 statements are irrelevant and should not be considered as they fall outside of the scope of the
8 inability to pay defense under FINRA Rule 9554. Specifically, the since the date of the award
9 provision.

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12 Motherway has been compliant with all financial requests from FINRA as it
13 applies to the disclosure of assets held by members of the household. The question becomes,
14 does Tara Baquero become liable for the indebtedness of Daniel Motherway? Certainly, Tara
15 Baquero was not named in the promissory note nor the arbitration that is the nexus of the award.
16 Tara Baquero never became party nor took title of any funds from the promissory note. In fact,
17 Motherway and Tara Baquero have never shared bank or investment accounts. Tara Baquero is
18 not liable for any of this debt and therefore her solely owned assets are not relevant to the ability
19 to pay. Furthermore, as disclosed, Tara Baquero has denied Motherway access to any assets.
20 FINRA consistently maintains that Tara Baquero's assets are available to him, this is patently
21 false.

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24 FINRA in its opposition to the appeal includes items not included in Hearing
25 Officer McClain's decision. Namely, "Motherway has provided no reliable evidence that he
26 attempted to borrow funds from his wife or, for that matter, from anyone else" and "enjoys the
27 benefits of driving a \$50,000 car that his wife purchased for him". Both of these statements are

1 fabricated and do not represent those of the Hearing Officer. FINRA wishes to represent their
2 own biased opinions and somehow represent them as decisions from the Hearing Officer. These
3 are no more than opinions and should be treated as such. Surely, anyone with a modicum of
4 financial wit, which I assume FINRA possesses would conclude without much resistance that a
5 person without assets, employment or income could not procure a loan for \$1.3 million to satisfy this
6 or any liability.

8 FINRA requested assets and liability disclosures by a member of a household. It
9 has conveniently assumed that any asset listed is at the disposal of all household members. This
10 is clearly incorrect. FINRA has also ignored the ownership of assets in its opposition. At no
11 time did Motherway acknowledge or represent that assets were accessible to him. Because
12 FINRA doesn't want to know this, as it would prevent it from making assumptions to the
13 contrary and rendering its current argument moot.

15 As stated in my prior application along with the facts enumerated in that brief as
16 well as this reply, I clearly satisfied my burden of proof in this matter. I have no income, no
17 assets, no employment, no ability to borrow, no ability to make a "meaningful payment", no
18 hidden assets, no discretionary income. As required by FINRA 9554, my inability-to-pay
19 defense should be affirmed. At no time has the FINRA Hearing Officer disputed my ability to
20 pay, clearly, I have none. There are no hidden assets, no discretionary spending, no funds in
21 which I can draw from. Instead, he relied on the assets of my wife, who has refused to surrender
22 those. The Hearing Officer's decision should be overturned. That is my request based on the
23 information provided.

26 Dated this 16 of November 2020.

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Daniel Motherway, pro se.