FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. ARQUE CAPITAL, LTD. (CRD No. 121192), Respondent.	Expedited Proceeding No. DFC230002 STAR No. 20230793367 Hearing Officer–BEK **EXPEDITED DECISION** December 1, 2023

Respondent Arque Capital, Ltd., failed to pay FINRA dues, fees, and other charges. Accordingly, its membership is cancelled.

Appearances

For the Complainant: Michael Manning, Esq., Mark Fernandez, Esq., and Jennifer L. Crawford, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Audrey Kuwabara, Immediate Past Interim Chief Executive Officer for Arque Capital, Ltd.

DECISION

I. Introduction

On June 16, 2023, Respondent Arque Capital, Ltd., filed a Uniform Request for Broker-Dealer Withdrawal ("Form BDW"). On June 28, 2023, FINRA staff sent Respondent a Notice of Cancellation of Membership in Connection with Unpaid Dues, Fees and Other Charges ("Notice") pursuant to FINRA Rule 9553. FINRA staff cited Article IV, Section 5, of FINRA's By-Laws, which requires that all indebtedness due to FINRA be paid in full before FINRA deems a termination from membership effective. The Notice informed Respondent that (1) the outstanding dues, fees, and other charges owed to FINRA totaled $65,898.93; and (2) if it did not submit payment in full, its membership would be cancelled on July 20, 2023.[1]

[1] Complainant's Exhibit ("CX-_") 1. According to the Notice, Respondent owed $1,385 in Member Regulatory Fees, $.03 in OTC Reporting Fees, $4,555 in Arbitration Fees, $4,333.90 in Central Registration Depository ("CRD") Fees, and $55,625 in Fines and Costs Fees. CX-1, at 1. *See also* Transcript of August 24, 2023, Expedited Hearing ("Tr.") 54-57 (referring to "OTC" as "over the counter").

The Notice also informed Respondent that it could request a hearing, which Respondent did on July 18, 2023.[2] The hearing request stayed the imposition of the cancellation. I conducted a hearing on August 24, 2023.

Respondent does not dispute that it is indebted to FINRA and has not expressed any intent to pay its indebtedness. Rather, it argues in its defense that: (1) the Notice was not proper under the Securities Exchange Act of 1934 ("Exchange Act"); (2) the Notice had no effective value, in part because Respondent filed its Form BDW before the issuance of the Notice; (3) FINRA has "unclean hands" because Respondent filed the Form BDW at FINRA's direction; and (4) FINRA frustrated the purpose underlying Respondent's contract with FINRA.[3]

Respondent failed to demonstrate these or any other defenses at the hearing and expressed no intent to pay what is owed to FINRA. Accordingly, I find it appropriate to cancel Respondent's membership in FINRA. In addition, I order Respondent to pay the costs of the hearing.

II. Jurisdiction

Respondent has been a FINRA member since 2002.[4] Although Respondent requested termination of its membership on June 16, 2023, that request is pending, and Respondent remains subject to FINRA's jurisdiction.[5]

III. Findings of Fact and Conclusions of Law

A. Background

On May 10, 2023, FINRA agreed to a Letter of Acceptance, Waiver, and Consent ("AWC") submitted by Respondent and its former CEO, who also owned Respondent, in settlement of alleged rule violations.[6] Pursuant thereto, Respondent was censured and fined $50,000, and its former CEO was suspended in all capacities for seven months and fined

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[2] Respondent's former Chief Executive Officer ("CEO"), who was suspended at the time and no longer associated with Respondent, submitted the hearing request. Respondent's Exhibit ("RX- _") 2. Respondent's request for a hearing did not state any defenses. Ultimately, Respondent's interim CEO filed a Notice of Appearance and stated its defenses, and I allowed her to adopt the hearing request on behalf of Respondent. Tr. 8.

[3] *See* Response by Arque Capital, LTD., to Order Following Pre-Hearing Conference (August 11, 2023) ("Response by Arque"); Tr. 24-32. Respondent essentially seeks to have its Form BDW approved in lieu of having its membership cancelled. Tr. 173. According to Enforcement, the primary difference between approval of Respondent's Form BDW and membership cancellation is how the public record reflects the end of Respondent's FINRA membership. Tr. 165; *see also* RX-14 (briefly addressing the differences between a membership cancellation and voluntary termination).

[4] CX-5, at 1 (Letter of Acceptance, Waiver, and Consent reflecting Respondent's FINRA membership since 2002).

[5] CX-4B, at 1 (Organization Registration Status ("ORS") page from CRD reflecting Respondent's membership status as "Termination Requested"); Tr. 45 (stating that the ORS page of the CRD was printed August 18, 2023).

[6] CX-5.

$15,000.[7] On May 11, FINRA notified the former CEO that his suspension would be in effect from June 5, 2023, through January 4, 2024.[8] On May 16, FINRA notified Respondent that as a result of the former CEO's suspension, he was subject to disqualification as defined in Section 3(a)(39) of the Exchange Act.[9] Because the former CEO was also an owner of Respondent, FINRA notified Respondent that it needed to do one of three things: (1) request approval to continue to associate with its owner; (2) terminate association with its owner; or (3) file a Form BDW requesting voluntary withdrawal of membership from FINRA.[10]

Respondent assessed its options and, on June 16, 2023, filed a Form BDW.[11] Because Respondent was indebted to FINRA, FINRA did not approve the request to withdraw and issued the Notice.[12] This led to the hearing.

B. Enforcement Established That Respondent Was Indebted to FINRA

In addition to introducing the Notice with its listing of the amounts owed to FINRA, Enforcement introduced a seven-page document referred to as the BDW workbook, which FINRA staff prepare as standard procedure for every firm that submits a BDW.[13] Respondent did not object to the admission of this exhibit.[14] The BDW workbook reflects a summary of the amounts owed to FINRA. Specifically, it reflects multiple invoices for arbitration/dispute resolution fees totaling $4,555,[15] fines and costs of $55,625,[16] a member regulatory fee balance

[7] CX-5, at 6.

[8] RX-7.

[9] RX-8; RX-9.

[10] RX-9.

[11] RX-5; Tr. 125-26.

[12] CX-1.

[13] Tr. 47.

[14] Tr. 50.

[15] CX-3, at 1; Tr. 48-49 (explaining that "ARB" on CX-3 stands for arbitration/dispute resolution and that there were nine related invoices totaling $4,555).

[16] CX-3; Tr. 49-55 (explaining that "FNC" on CX-3 (mistakenly reflected on the transcript as "F and C") stands for fines and costs).

of $1,385,[17] an over-the-counter reporting facility fee of $.03,[18] and CRD regulatory fees of $4,333.90,[19] for a total of $65,898.93.[20]

C. Enforcement Erroneously Contended That There Are Limited Defenses in a FINRA Rule 9553 Proceeding

Enforcement contended that the only defenses cognizable for the cancellation of membership under FINRA Rule 9553 were that the respondent: (1) paid the amounts due in full; (2) entered into a fully-executed, written installment payment plan with FINRA and the payments are current; (3) timely filed an action to vacate or modify the arbitration award that was issued in the arbitration proceeding for which outstanding fees were assessed, and the motion has not been denied; or (4) filed for bankruptcy protection and the outstanding fees have not been deemed by a federal court to be non-dischargeable.[21] Enforcement further contended that "a *bona fide* inability to pay the dues, fees, or other charges may be a factor in determining whether any sanction for failure to pay is excessive or oppressive."[22]

Enforcement argued that "the limitation of defenses [in a Rule 9553 proceeding] is established and has long been recognized in a line of case orders, the Securities and Exchange Commission ("SEC") caselaw and in FINRA's rulemaking history and in a National Adjudicatory Council ("NAC") notice to members."[23] However, Enforcement failed to cite any SEC caselaw, FINRA rulemaking history, or NAC notices to members, and I have not found any supporting Enforcement's argument. Enforcement cited five cases in support of its argument. However, all of them are distinguishable from this case.

Four of the cases cited by Enforcement involved respondents' failure to pay arbitration fees only; they did not involve dues or fees and other charges not related to an arbitration proceeding.[24] Intuitively, it makes sense that the defenses to a fee associated with an arbitration

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[17] CX-3; Tr. 56-57 (explaining that "MREGN" on CX-3 stands for member regulatory fee).

[18] CX-3; Tr. 57 (explaining that "ORFBI" on CX-3 stands for over the counter reporting facility or OTC reporting facility).

[19] CX-3, at 1; Tr. 57-58 (explaining that "CRDG" on CX-3 stands for the CRD regulatory fees and includes any type of registration fees that are charged to a firm's CRD account with FINRA, for example, fingerprint fees, and U5, U4, and exam fees.

[20] CX-3, at 1.

[21] Enforcement's Reply to Arque Capital's Motions to Proceed to a Hearing and to Postpone the Hearing 2 ¶ 3 (August 14, 2023).

[22] *Id.*

[23] Tr. 16.

[24] *See* OHO Order EXP17-01 (DFC170003) (Jun. 12, 2017), at 5, http://www.finra.org/sites/default/files/OHO_EXP-Order_17-01_DFC170003.pdf (in a case involving only arbitration fees, stating there are limited defenses available under FINRA Rule 9553 and dismissing hearing request that failed to assert a permissible defense); *NASD Treasurer v. Fisher*, No. DFC050011, 2006 NASDR OHO Lexis 95, at *4 (OHO Apr. 5, 2006); OHO Redacted Decision No. DFC020014 at *2 n.2 (OHO Oct. 3, 2002), http://www.finra.org/sites/default/files/OHO

proceeding might be limited as noted above.[25] For example, if the arbitration award was vacated, it likely would eliminate any associated fees. In contrast, the defense of vacating or modifying an arbitration award appears inapposite to dues owed to FINRA, or fees and other charges not related to an arbitration proceeding. Similarly, it is not clear how a bankruptcy filing or an inability to pay dues might be a defense to FINRA's cancellation of membership based on the failure to pay FINRA (non-arbitration related) dues or other indebtedness.

The fifth case, *Regulatory Operations v. McBarron Capital LLC*, included an annual Member Regulation fee, a fee associated with CRD, and a surcharge assessed in connection with an arbitration proceeding.[26] This case involved a notice that informed the respondent of the applicable defenses, as understood by the FINRA office sending that notice.[27] In that case, the respondent failed to contest Enforcement's position (and the information stated in the notice) that there were limited defenses. Rather, the respondent asserted as a defense that FINRA had not properly assessed the fees. The hearing officer found this defense to be a collateral and impermissible attack on the fee assessment, and he rejected the hearing request.[28]

Here, the Notice did not include a list of defenses, except, implicitly, to the extent it stated cancellation of membership could be avoided if the firm paid the indebtedness in full.[29] In

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Decision/p006700_0_0.pdf (stating only limited defenses are available under FINRA Rule 9553 in a case involving only arbitration fees); *Reg. Operations v. Dakota Sec. Int'l, Inc.*, No. DFC170004*,* 2018 FINRA Discip. LEXIS 5, at *1 (OHO Feb. 6, 2018), *appeal dismissed*, Exchange Act Release No. 85238, 2019 SEC LEXIS 288 (Mar. 1, 2019) (citing *Fisher* for the proposition that there are limited defenses available under FINRA Rule 9553, but involving only arbitration fees); OHO Order EXP15-01 (DFC140002) (Mar. 18, 2015), at 3, http://www.finra.org/sites/default/files/OHO_Order-15-01_Expedited-Proceeding_0_0.pdf. (noting limited defenses, including bona fide inability to pay as a factor in determining if any sanctions are warranted, but involving only fees associated with an arbitration proceeding).

[25] It is well established that there are limited defenses in a FINRA Rule 9554 proceeding involving failure to pay an arbitration award. *See, e.g*., FINRA By-Laws, Article VI, Section 3(b); *Michael Albert DiPietro*, Exchange Act Release No. 77398, 2016 SEC LEXIS 1036, at *8–10 (Mar. 17, 2016).

[26] *Reg. Operations v. McBarron Cap. LLC*, No. DFC160001, 2016 FINRA Discip. LEXIS 55 (OHO Dec. 8, 2016).

[27] At the hearing, Enforcement correctly noted that a FINRA department could not establish the defenses in a case, further noting if "that were the case, then FINRA finance or whomever else might issue the notice could unilaterally dictate in each individual case what defenses were permitted and what defenses were not permitted." Tr. 16.

[28] *McBarron Cap. LLC*, 2016 FINRA Discip. LEXIS 55, at *2-3. In support of his finding that a collateral attack on the fee assessment was not permissible, the hearing officer cited OHO Order 06-56 (DFC060004) (Dec. 20, 2006), at 2 n.1, http://www.finra.org/sites/default/files/OHODecision/p018440.pdf (citing *John G. Pearce*, Exchange Act Release No. 37217, 1996 SEC LEXIS 1329 (May 14, 1996)). The cited Order, however, addressed fees assessed in connection with an arbitration proceeding and the cited case, *Pearce*, held that a respondent could not collaterally attack an arbitration award in a FINRA proceeding; the cited Order and case do not address whether one can collaterally attack FINRA dues, fees, or other charges not assessed in connection with an arbitration proceeding. *McBarron Cap LLC* was not called for review by the NAC, but it was appealed to the SEC, where the appeal was dismissed for applicant's failure to timely file responses, and it was not reopened. *See McBarron Cap. LLC*, Exchange Act Release No. 81789, 2017 SEC LEXIS 3113 (Sept. 29, 2017).

[29] CX-1.

response to Enforcement's objection to Respondent's presenting evidence supporting its defenses, Respondent argued that its defenses were "wholly applicable."[30] Absent definitive case law that the defenses in this instance are limited to those asserted by Enforcement I permitted Respondent to present the evidence in support of its defenses, and I address them below.

D. Respondent Failed to Demonstrate Its Defenses

1. Respondent Failed to Demonstrate That the Notice was Not Proper Under the Exchange Act

Respondent argues that under the implementing regulations of the Exchange Act, its voluntary withdrawal from FINRA membership had to become effective 60 days after it filed its Form BDW unless proceedings were initiated to impose terms or conditions on its withdrawal.[31] In support of its argument, Respondent cited 17 CFR 240.15b6-1(b),[32] which states:

> A notice of withdrawal from registration filed by a broker or dealer pursuant to Section 15(b) of the Act shall become effective for all matters (except as provided in this paragraph (b) and in paragraph (c) of this section) on the 60th day after the filing thereof with the [Securities and Exchange] Commission . . . . If a notice of withdrawal from registration is filed with the Commission at any time subsequent to the date of the issuance of a Commission order instituting proceedings pursuant to Section 15(b) of the Act to censure, place limitations on the activities, functions or operations of, or suspend or revoke the registration of such broker or dealer, or if prior to the effective date of the notice of withdrawal pursuant to this paragraph (b), the Commission institutes such a proceeding or a proceeding to impose terms or conditions upon such withdrawal, the notice of withdrawal shall not become effective pursuant to this paragraph (b) except at such time and upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

Respondent, however, fails to appreciate that the cited regulation applies only to its registration with the SEC. It has nothing to do with Respondent's membership in FINRA. Form BDW is a multi-purpose form that allows a filer to submit its withdrawal from registration with the SEC and applicable states, as well as withdrawal of membership with FINRA.[33] Respondent marked on its Form BDW that it requested a complete withdrawal from all registrations and

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[30] Tr. 70.

[31] *See* Response by Arque 9; Tr. 25-26.

[32] *See* Response by Arque 9.

[33] *See* Form BDW at http://www.sec.gov/files/formbdw.pdf.

FINRA membership.[34] Indeed, the SEC withdrawal became effective August 15, 2023, consistent with 17 CFR 240.15b6-1(b).[35]

Withdrawal of FINRA membership, however, is governed by FINRA's By-Laws, and a member is not permitted to withdraw voluntarily while it is indebted to FINRA.[36] In sum, the regulation cited by Respondent is inapplicable to FINRA membership, and Respondent fails to demonstrate that FINRA's Notice was improper.

Respondent also asserts that FINRA accepted its withdrawal as reflected on BrokerCheck, and should not be allowed to revoke that acceptance.[37] However, the documentary evidence does not reflect that FINRA accepted its withdrawal. The only BrokerCheck report submitted by Respondent is undated and it reflects its FINRA membership as "Termination Requested."[38] The undated CRD pages submitted by Enforcement reflect SEC registration as "Terminated" on August 15, 2023, and FINRA registration as "Termination Requested" on June 16, 2023.[39] Although the CRD pages in the record are undated, they are at least current as of August 15, 2023, the latest date reflected on the pages.[40]

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[34] RX-5.

[35] CX-4B.

[36] FINRA By-Laws, Article IV, Section 5 ("Membership in the Corporation may be voluntarily terminated only by formal resignation. Resignations of members must be filed via electronic process or such other process as the Corporation may prescribe and addressed to the Corporation. *Any member may resign from the Corporation at any time. Such resignation shall not take effect until 30 days after receipt thereof by the Corporation and until all indebtedness due the Corporation from such member shall have been paid in full and so long as any complaint or action is pending against the member under the Rules of the Corporation.* The Corporation, however, may in its discretion declare a resignation effective at any time.") (italics added).

[37] Tr. 70-71, 133-34, 172-73. BrokerCheck is a public website that FINRA operates and maintains. *See* http://brokercheck.finra.org. In contrast, CRD is FINRA's non-public database that supports the licensing and registration filing requirements for the securities industry. *See* http://www.finra.org/registration-exams-ce/classic-crd.

[38] RX-10, at 10.

[39] CX-4B, at 1. Enforcement believes they were printed on August 18, 2023. Tr. 45-46.

[40] Respondent's interim CEO was clear in believing BrokerCheck reflected its FINRA membership as terminated, at least at some point. Tr. 70-71, 133. But Respondent failed to submit a copy or screenshot of the BrokerCheck website reflecting this. Confusingly, Enforcement understood Respondent to be referring to CRD (as opposed to BrokerCheck) and stated that it appeared that Respondent's FINRA membership was reflected on CRD as terminated on the date of the hearing, August 24, 2023, and that it would address this issue in its closing remarks. Tr. 71-72. In its closing remarks, Enforcement stated, also confusingly, and again referencing Respondent's comment about CRD (as opposed to BrokerCheck) that any reference in CRD reflecting FINRA membership as terminated was an error and had been corrected. Tr. 166. Respondent, however, never referenced CRD on this issue and even noted that it no longer had access to CRD. Tr. 133. Neither party submitted a screen shot or copy of a report from either BrokerCheck or CRD reflecting Respondent's FINRA membership as terminated or cancelled.

2. Respondent Failed to Demonstrate That the Notice had No Effective Value

Respondent argues that (1) the Notice had no effective value because it filed its Form BDW before FINRA issued the Notice; and (2) its voluntary resignation became effective either immediately upon filing because such filing terminated its membership agreement, or on August 15, 2023, presumably pursuant to 17 CFR 240.15b6-1(b) or as reflected in BrokerCheck.[41] Respondent offers no further explanation or evidence to support its assertion that filing Form BDW immediately terminated its FINRA membership agreement. Indeed, as already noted, FINRA By-Laws preclude voluntary withdrawal when the requestor is indebted to FINRA, as is the undisputed case here.[42] And, as noted above, (1) 17 CFR 240.15b6-1(b) addresses only SEC registration—it has nothing to do with FINRA registration or membership; and (2) the record documents, including BrokerCheck, do not reflect Respondent's FINRA membership as terminated.

3. Respondent Failed to Demonstrate That FINRA had "Unclean Hands"

In support of its "unclean hands" argument, Respondent notes that FINRA specifically told Respondent to file a Form BDW by May 31, 2023.[43] Respondent asserts that FINRA cannot thereafter refuse to accept its voluntary withdrawal (effected by filing Form BDW) and cancel its membership instead.[44]

At the outset, it is well settled that "unclean hands" is not a defense to a disciplinary action for violating FINRA rules or security laws.[45] Moreover, Respondent failed to demonstrate any unclean hands by FINRA. FINRA did not direct Respondent to file a Form BDW. Rather, FINRA provided Respondent three options that Respondent could take in response to its owner being subject to disqualification. Filing a Form BDW was only one of the options. The other options were: (a) to file an MC-400 Application requesting permission to continue to operate with its owner still in place and pay the application fee of $5,000, or (b) to terminate its association with its owner, notify FINRA of this action by May 31, 2023, and complete related paperwork including filing a Uniform Termination Notice for Securities Industry Registration (Form U5) within 30 days of the termination and possibly an MC-400 Application if otherwise required.[46]

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[41] *See* Response by Arque 10; Tr. 26-27.

[42] *See* FINRA By-Laws, Article IV, Section 5.

[43] *See* Response by Arque 10-11; Tr. 27-30.

[44] *See* Response by Arque 10-11; Tr. 27-30.

[45] *See, e.g.*, *Dep't of Enforcement v. Epstein*, No. C9B040098, 2007 FINRA Discip. Lexis 18, at *88–89 (NAC Dec. 20, 2007), *aff'd*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217 (Jan. 30, 2009).

[46] RX-9; *see also* MC-400 Application form at http://www.finra.org/sites/default/files/form-mc-400.pdf; Form U5 at http://www.finra.org/sites/default/files/form-u5.pdf.

Respondent argues that taking one of these other actions was futile because an MC-400 Application could not be processed in time, and the termination of its association with its owner required actions that could not be completed in sufficient time to satisfy FINRA.[47] Thus, Respondent argues, it had no other option but to file a Form BDW.[48] But, other than the assertions of Respondent's owner and interim CEO, there is no record evidence that an MC-400 Application could not be processed in time, or that FINRA would not have granted extensions of time to permit Respondent to operate pending a decision on its MC-400 Application.[49] Similarly, any failure to effect a sale or to seek an extension of time to effect a sale is not the fault of FINRA. In the end, the options presented to Respondent resulted from its and its CEO's misconduct and not unclean hands on the part of FINRA.

To the extent Respondent attempts to blame FINRA for not informing it at the outset that its Form BDW would not be accepted while it owed fees, dues, and other charges, the requirement to pay fees is a part of FINRA membership to which Respondent agreed. Respondent's failure to understand that it could not withdraw voluntarily while indebted to FINRA is due to Respondent's failure to read the very By-Laws it agreed to be subject to, and not due to any unclean hands on the part of FINRA.[50] Finally, to the extent Respondent contends that FINRA cannot cancel a membership after a member has submitted its Form BDW, Respondent cites to no authority for that proposition. And, when a member is indebted to FINRA, the fact remains that Article IV, Section 5 of FINRA's By-Laws do not allow a member to withdraw its membership.

4. Respondent Failed to Demonstrate That the Purpose Underlying Respondent's Contract with FINRA was Frustrated by FINRA

In support of Respondent's contract-frustration defense, Respondent argues that it was its understanding upon signing the AWC that it could continue to operate. Respondent contends that, because the options to do so were so elusive, FINRA essentially frustrated its underlying agreement with Respondent that it could operate within the financial industry.[51] Respondent argues that "[a] contract that is found to be frustrated, is automatically terminated . . . ."[52]

To the extent Respondent is arguing that FINRA misled Respondent when the parties executed the AWC into believing it could continue to operate, the fact is it could have continued

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[47] Tr. 28-30 (noting four options Respondent considered to terminate its association with its owner); Tr. 143-50 (Respondent's interim CEO testifying to her understanding of Respondent's options).

[48] Tr. 24, 29, 125.

[49] Respondent was granted one extension pending its decision on which option to take. RX-12, at 1. *See also* FINRA Rule 9522(a)(3) (authorizing FINRA to grant an extension of time for good cause to file an MC-400 Application).

[50] RX-3, at 5-6 (Arque's Membership Agreement with FINRA wherein Arque agreed to comply with FINRA's By-Laws).

[51] *See* Response by Arque 11-12; Tr. 30-32.

[52] *See* Response by Arque 12; Tr. 32.

to operate if Respondent had filed an MC-400 Application or terminated association with its owner. As noted above, there is no supporting evidence that either option was futile. Moreover, whatever choices Respondent may or may not have made regarding its AWC or its understanding upon signing the AWC, Respondent was represented by counsel at the time, and its choices and understanding are not attributable to FINRA.[53]

In sum, to the extent there is any contract-frustration, it arose from Respondent's own misconduct and that of its former CEO-owner, and Respondent's election not to file an MC-400 Application or terminate association with its owner. Respondent fails to demonstrate any frustration of contract caused by FINRA.

IV. Sanctions

In determining the appropriate sanction, I considered not only the parties' arguments, but the importance of paying dues, fees, and other expenses due to FINRA and the failure of Respondent to express any intent to pay what it owes to FINRA.[54] Allowing Respondent to remain, or voluntarily withdraw from, FINRA membership without paying, or intending to pay, the assessed, uncontested dues, fees, and other expenses would undermine the entire fee-based and fee-supported FINRA organization and be unfair to the other fee-paying members of FINRA. Cancelling Respondent's membership immediately also serves as an inducement to other members to pay their assessed dues and other charges, which furthers the stability of FINRA and protection of the public interest.[55]

Accordingly, I find it appropriate to immediately cancel Respondent's membership in FINRA.[56]

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[53] Tr. 119; CX-5, at 10.

[54] Pursuant to FINRA Rule 9559(n)(1), a Hearing Officer "may approve, modify or withdraw any and all sanctions, requirements, restrictions or limitations imposed by the notice and, pursuant to Rule 8310(a), may also impose any other fitting sanction."

[55] *Cf. Michael David Schwartz*, Exchange Act Release No. 81784, 2017 SEC LEXIS 3111, at *18 (Sept. 29, 2017) (quoting *William J. Gallagher*, Exchange Act Release No. 47501, 2003 SEC LEXIS 599, at *13–14 (Mar. 14, 2003)) (noting how suspensions of memberships for failure to pay arbitration awards induce payment of such awards and furthers the public interest and the protection of investors).

[56] I have considered and reject without discussion all other arguments of the parties.

V. Order

The FINRA membership of Arque Capital, Ltd., is cancelled, effective as of the date of this Order and shall constitute FINRA's final action. In addition, Arque Capital, Ltd., is **ORDERED** to pay FINRA costs of $2,359, which includes an administrative fee of $750 and hearing transcript costs of $1,609. The costs shall become due upon issuance of this decision.

Bruce E. Kasold
Hearing Officer

Copies to:

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