
TIPS FOR BRINGING A CLAIM AGAINST A SECURITIES BROKER

Litigation against a securities broker differs from other types of litigation. In this guide there will be several tips if you decide to bring a claim against your broker.

1

HOW DO YOU START THE CLAIMS PROCESS?

The typical broker-customer agreement provides, in fine print, that any dispute between customer and broker must be submitted to arbitration. Arbitration will be cheaper and faster than litigation. It may be in the claimant's interest if the claim is small and the issues simple. A customer in arbitration receives no jury, and review by the courts is very limited. Brokers and their firms prefer the speed, economy, and sympathy of industry arbitrators. Your demand for arbitration should be filed with FINRA (Financial Industry Regulatory Authority). See <http://www.finra.org/>

2

HOW LONG DO YOU HAVE TO BRING A CLAIM?

The length of time you have to file a claim against your broker will be governed by the agreement you signed when you opened your account. So keep in mind that the standard customer agreement allows a shorter time to start arbitration than the "usual" statute of limitations. Under FINRA rules, "no claim shall be eligible for submission to arbitration under the Code where six years have elapsed from the occurrence or event giving rise to the claim."

3

WHO SHOULD YOU NAME IN YOUR ARBITRATION COMPLAINT?

You should always consider suing more than one party, called a "respondent" in a FINRA arbitration complaint. Even though you dealt with an account executive, the office manager and the brokerage firm itself might be vicariously liable for any wrongdoing of the account executive. If the other respondents failed to supervise the account executive, they may be liable as individuals. Brokerage firms have a difficult time avoiding liability for acts of its account executives. In a few cases, thorough account-review procedures on opening of new accounts, daily review of orders entered

by account executives, and cautionary communications from the office manager to the customer have been held sufficient supervision.

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HOW DO YOU GET THE NECESSARY EVIDENCE TO WIN YOUR ARBITRATION?

Securities cases against brokers are documents cases, even though most dealings took place by telephone and face to face. Discovery for you, called "the claimant," should begin with a request to get a copy of your own customer file. Examine your account documents carefully to determine whether the broker honored your objectives. The brokerage firm's file itself contains many documents which you should request. Each firm has different forms and procedures, but typically retains the original documents that opened the account, copies of research reports and prospectuses sent customers, order tickets filled out by the account executive which will show the date and time orders were entered, executed, or cancelled). Employee files, and monthly statements and confirmations of the transactions in the account should also be requested. Please note carefully the FINRA rule that "unless the parties agree otherwise, within 60 days of the date that the answer to the statement of claim is due, or, for parties added by amendment or third party claim, within 60 days of the date that their answer is due, parties must either: Produce to all other parties all documents in their possession or control that are described in Document Production Lists 1 and 2; Identify and explain the reason that specific documents described in Document Production Lists 1 and 2 cannot be produced within the required time, and state when the documents will be produced; or Object as provided in Rule 12508."

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WILL YOUR AGE BE A FACTOR IN YOUR CASE?

Age is certainly a factor the FINRA arbitrators will consider. An elderly investor who tells his broker he seeks an assured, steady income may find that he has bought speculative, short-term securities. That could create a suitability claim. A failure to properly advise and serve the customer also may be actionable as negligence or misrepresentation of material facts.