WHAT TO EXPECT WHEN PURSUING A FINRA ARBITRATION – FAQs

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1. <u>Why can't I file my claim in court and have my case heard by a jury</u>? It is possible that you have the option of proceeding in court and one of the considerations we address when we undertake the handling of any claim to recover investment-related losses is whether the claim might be pursued within the court system. Most of the time, however, this option is unavailable — and the claims must be pursued, if at all, in an arbitration proceeding — as a result of the client having signed an account agreement or other form containing a provision by which the client, often unknowingly, has agreed that any disputes that arise in connection with the account must be submitted to arbitration. When challenged in court, such arbitration provisions are consistently found to be enforceable, absent specific evidence of fraud, coercion or unconscionability.

2. <u>Who administers the arbitration process</u>? Most securities arbitrations are administered by FINRA, which is the Financial Industry Regulatory Authority. FINRA is an "SRO" (self-regulatory organization) - *i.e*., it is an organization consisting of more than 5,000 securities brokerage firms and it is charged with the responsibility (under the oversight of the Securities and Exchange Commission) of "self-regulating" the activities of the member firms and the "registered representatives" (brokers and financial advisors) who are employed by the firms.

3. <u>Are securities arbitrations expensive</u>? Various expenses may be incurred in the pursuit of arbitration claims. While various arrangements are possible, for most of the cases we handle we agree to advance the expenses of the case and will be reimbursed from the proceeds of any recovery that is realized through a settlement or arbitration award in your favor. The most significant expenses that are incurred in a typical case as it proceeds toward the final hearing are the initial filing fees that are due to FINRA when the statement of claim is filed and expert fees. The amount of filing fees payable upon filing a claim depends on the amount of damages claimed in the statement of claim, and ranges from $50 to $2,875. As an example, if the amount of damages claimed falls within the range of $100,000 to $500,000, the amount of the filing fee is $1,790.

Experts are retained in some cases, but not in others (*see* FAQ No. 9 below). At the appropriate time as the case proceeds to final hearing we will make a recommendation to the client concerning whether an expert (or perhaps more than one expert) should be retained. This recommendation will be based on a number of considerations, such as the amount of the claim and the complexity of the issues. If an expert is retained (with your approval), the expert fees will normally range from $5,000 to $10,000, and sometimes more. Before engaging an expert on your behalf, we would discuss the terms of the arrangement that we propose to enter into with the expert, and we would provide you with an estimate of the anticipated fees to be charged by the expert in light of the scope of services we would be asking the expert to provide.

4. What are the important events that occur in an arbitration proceeding and what is the timeline for these events? The arbitration process begins with the "claimant" (the person or persons who are attempting to recover investment-related losses) filing a "statement of claim" against the securities firm and/or broker (or others) that allegedly is/are responsible for the losses. Unless the case is settled, the process ends with the final hearing before the arbitration panel and the panel's issuance of its award. Although each case is different and the pace at which any particular case proceeds is subject to various factors, following is the general timeline for a securities arbitration of average complexity, once the statement of claim is filed on behalf of the claimant:

TIME AFTER FILING STATEMENT OF CLAIM (EST.)	EVENT
- - -	Claimant files a Statement of Claim with FINRA
1-2 months	Respondent(s) file written response to Statement of Claim
3 months	Appointment of arbitrators by FINRA following arbitrator selection process
4-5 months	Initial Pre-Hearing Conference (conducted telephonically among the arbitrators and counsel, principally to schedule the final hearing)
5-12 months	Exchange of documents among the parties
14-18 months	Final Hearing

FINRA's case administration statistics indicate that the average turnaround time to close a case, from initial filing through final hearing, is approximately sixteen months. There are many factors affecting the pace of any given case (a number of which are beyond our control), and you may find that your case does not proceed according to the above timetable or as expeditiously as we would like. We recognize that it is almost always in the best interests of our clients to have their cases proceed to final hearing as quickly as reasonably possible and we take all available steps to accelerate the disposition of the cases that we handle.

5. Who are the arbitrators and how are they selected? FINRA maintains a roster of more than 8,000 arbitrators. There are two classifications of arbitrators: public and non-public. Public arbitrators are individuals who are not required to have knowledge of the securities industry. They are frequently, but not always, lawyers. Non-public arbitrators generally are individuals who have experience in the securities industry or familial ties to someone in the industry.

Cases in which the amount of the claim exceeds $100,000 are decided by a panel of three arbitrators. In these cases, counsel for the parties receive three lists from FINRA: one with ten chair-qualified public arbitrators; one with fifteen public arbitrators; and one with ten non-public arbitrators. Each separately represented party may strike up to four of the ten arbitrators on the chair-qualified list, up to six of the fifteen arbitrators on the public list, and up to ten of the ten arbitrators on the non-public list. Accordingly, claimants (and other parties) have the option to select an all-public panel by striking all of the arbitrators on the non-public list. Parties then rank the remaining arbitrators on each list.

Cases in which the amount of the claim is $100,000 or less are decided by a single arbitrator. In these cases, the parties receive one list of ten chair-qualified public arbitrators. Each separately represented party may strike up to four arbitrators on the list, leaving at least six arbitrator names remaining on each party's list. Parties may rank the remaining arbitrators on each list.

6. <u>After we file the case, how much time will I need to spend on it</u>? This varies from case-to-case, but in general most of the time you will need to devote to the case will be in connection with the following activities:

- ***Pre-filing meetings and compilation of documents***. After we are retained and before we file a statement of claim on your behalf, you will need you to devote an appropriate amount of time to discussing the factual background to your claims, compiling and providing the relevant documents to us (as well as the documents that we later will need to provide to respondent's counsel - *see* FAQ No. 7 below), and carefully reviewing drafts of the statement of claim we prepare.

- ***Meeting to discuss the respondent's answer to the statement of claim***. The respondent will be required to file a written answer to the statement of claim we file on your behalf. Our practice is to schedule a meeting with our client promptly after the receipt of the respondent's answer, so that we can discuss in detail the defenses asserted by the respondent and identify what needs to be done to refute these defenses and thoroughly prepare for the final hearing.

- ***Settlement discussions/mediation***. In most cases, the parties (through their counsel) will explore whether the claims can be resolved through a settlement. You will have the right to accept or reject any settlement offer made by the respondent(s) and the decision concerning whether to settle is yours. If settlement discussions occur, we will confer with you concerning our evaluation of the strengths and weaknesses of the case, as well as the likelihood of various outcomes if the case proceeds to final hearing. In certain cases, the parties will agree to mediation, which involves the retention of a mediator who over the course of a day will facilitate settlement discussions and assist the parties in determining whether they can reach a settlement agreement.

- ***Preparation for Final Hearing***. If the case is not settled, approximately one month before the scheduled date for the final hearing we will schedule a series of meetings for the purpose of preparing you and other witnesses to testify. We will devote a significant amount of time to discussing an outline of your testimony, reviewing documents about which you will be expected to testify, and preparing you for the anticipated areas of cross-examination that may be pursued by opposing counsel.

- ***Final Hearing***. Depending on the factual complexity of the case and the number of witnesses involved, the duration of the final hearing normally is in the range of two to four days, with longer hearings needed for more complex cases. You will need to be present throughout the entire final hearing.

7. What information and documents will we need to provide to the respondents? The "discovery" process (the rights of parties to obtain documents and information from the other parties) in securities arbitrations is more limited than in court proceedings. The principal form of discovery that takes place in securities arbitrations is an exchange of documents between the parties. Under the FINRA "Discovery Guide," you will be required to provide to us, and we in turn will be required to provide to the respondent's counsel, various categories of documents. We are required to provide these documents within sixty days after the filing of respondent's answer to the statement of claim. Similarly, the respondent(s) will be obligated to provide certain specified documents to us within the same timeframe. In addition to categories of documents that the parties are required to produce under the Discovery Guide, the rules give parties the right to request that additional categories of documents be provided.

The categories of documents that claimants are generally required to produce to respondents are set forth in "List 2" of the Discovery Guide (see pages 13-17). Often, a number of these categories are not applicable in a particular case or the documents described in various categories do not exist. Our standard practice is to request that our clients provide the documents that are required to be produced before we file the statement of claim. This serves two purposes. First, it is important that we are fully aware of, and have the opportunity to discuss with you as we are preparing the statement of claim, all documents that will later be provided to opposing counsel and that may be relevant to the issues in the case. Second, it will give us ample time to carefully organize, compile, copy and provide to the respondent's counsel all of the required documents in a timely manner. Once you provide us with the documents that we need to provide, we will organize and number the documents and otherwise prepare them for production to respondent's counsel.

8. Will I need to have my deposition taken? Depositions (pre-trial or pre-hearing testimony given under oath in the presence of a court reporter) are not permitted in securities arbitrations, except in extraordinary circumstances. Therefore, it is virtually certain that counsel for the respondent will not have the opportunity to take your deposition before the final arbitration hearing. This is a "two-way street," of course, as we generally will not have the right to take depositions of witnesses who may testify on behalf of the respondent at the final hearing.

9. **<u>Will we need to retain an expert witness</u>?** In some cases, the retention of a qualified expert is critical to the effective presentation of the case; in some cases, an expert is may not be necessary or cost-effective. The decision concerning whether or not to retain an expert is made collaboratively with our clients after we are retained. In general, experts in securities arbitrations are retained to do one or both of the following: (i) testify at the hearing about the failure of the respondents to satisfy their duties under the rules and standards of conduct of the securities industry, including failures to supervise; and (ii) prepare reports quantifying the damages incurred by the claimant and provide testimony at the hearing about such damages.

10. **<u>How likely is it that we will agree to a settlement of my claims prior to the final hearing</u>?** In most cases, the parties through their counsel explore the possibility of settlement at some point prior to the final hearing. Many cases are resolved prior to the final hearing, as there are strong incentives on the part of both claimants and respondents to avoid the expense and risk of proceeding to a final hearing. The decision as to whether or not to settle — and whether or not to accept any settlement offer made on behalf of the respondent — is that of our clients. We assist our clients in making that decision by providing them with an ongoing evaluation of the strengths and weaknesses of the case and the likelihood of possible outcomes if the case proceeds to a final hearing.

11. **<u>If we don't settle the case before the final hearing, how likely is it that the award issued by the arbitration panel will be in my favor</u>?** FINRA's reported "win" rate (where a claimant is awarded damages) in the years 2019 through 2025 in cases decided by three public arbitrators ranges on a yearly basis between 31% and 53% (31% in 2024 and 34% in 2025 YTD) for cases that proceeded to a final hearing. It should be noted, however, that in many of the cases where claimants were awarded damages, the claimants only recovered a portion of the damages they were claiming. Our clients can find comfort in these statistics from the fact that most of the stronger cases settle before final hearing. We strive to investigate and develop our cases in such a manner that we are fully prepared to proceed to final hearing; the respondents' awareness of this allows us to settle many cases on terms that are attractive to our clients.

12. **<u>If I win, can the respondent appeal? If I lose, can I appeal</u>?** The right to appeal or challenge the validity of an award properly issued by an arbitration panel is very limited. Although there are steps that can be taken in certain narrow situations by claimants and respondents to challenge awards, it is prudent to assume that there will be no opportunity to appeal or overturn an unfavorable award. If we receive an award in your favor and the award is challenged in court by the respondent (through, for example, a request to "vacate" the award), it is unlikely, absent unusual circumstances, that the respondent will be successful with such a challenge and we will take the appropriate steps to request that the court uphold the validity of the award.

13. **<u>If I win, when will I be paid</u>?** In most cases, victorious claimants are paid promptly. Brokerage firms are subject to severe FINRA-imposed sanctions if they do not pay in a timely manner arbitration awards that are entered against them. In certain cases, however, the

financial viability of the respondent may be in doubt and the collection of an award may involve collection issues. If this is the case, the scope of your retention of our firm would include appropriate steps taken on your behalf to obtain a judgment against the respondent and to attempt to enforce that judgment through the court system.

***It is important to recognize that these FAQs are not intended to provide a complete description of the arbitration process. We encourage you to contact us to discuss any questions or concerns you may have about securities arbitrations — either presently or as questions or concerns may arise in the future. We appreciate the trust you are placing in us if you retain us to represent you to recover your investment losses, and we look forward to working with you to achieve a favorable outcome in your case.