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SECURITIES AND INVESTMENT DISPUTES

“IT’S YOUR MONEY”

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COMMON ISSUES WITH VARIOUS SECURITIES PRODUCTS

1. STOCKS (EQUITIES)
 - A. UNSUITABILITY
 - B. IMPROPER ASSET ALLOCATION/OVER-CONCENTRATION

2. PRIVATE PLACEMENTS (E.G., LIMITED PARTNERSHIPS)
 - A. UNSUITABILITY
 - ILLIQUID – NOT TRADED ON A MARKET
 - LIMITATIONS ON REDEMPTION
 - INVESTMENT RISK
 - B. IMPROPER ASSET ALLOCATION/OVER-CONCENTRATION
 - C. NOT REGISTERED (OR NOT PROPERLY EXEMPTED)
 - D. FRAUD

3. ANNUITIES
 - A. UNSUITABILITY
 - B. LONG TIME HORIZON (WITHDRAWAL PENALTIES)
 - C. IMPROPER “SWITCHING”
 - D. HIGH COSTS (= ENTICING TO BROKERS AND ADVISORS)
 - E. SOMETIMES TAX ISSUES
 - F. OVERLY COMPLEX: MOST PEOPLE DON’T UNDERSTAND THEM

4. MUTAL FUNDS
 - A. COSTS (LOAD FUNDS)
 - B. SWITCHING

LEGAL CLAIMS MOST COMMONLY ASSERTED

1. UNSUITABILITY
2. MISREPRESENTATION/FRAUD
3. NEGLIGENCE
4. NEGLIGENT SUPERVISION

--“RED FLAGS” IN BROKER’S HANDLING OF ACCOUNT
5. BREACH OF FIDUCIARY DUTY
(= NOT PUTTING CLIENTS’ INTERESTS AHEAD OF ADVISOR’S)
6. SALE OF UNREGISTERED SECURITIES
8. SALE OF SECURITIES BY UNLICENSED BROKER
9. CONVERSION (IE, THEFT OF FUNDS/ASSETS)
10. FAILURE TO PROVIDE “HEDGING” ADVICE FOR CONCENTRATED POSITION (“COLLARS” OR “PUTS”)

TYPES OF DAMAGES THAT ARE RECOVERABLE:

1. "OUT OF POCKET" DAMAGES
 - A. MOST ARBITRATORS WILL "NET" GAINS AGAINST LOSSES TO REDUCE DAMAGES
 - B. THERE ARE ARGUMENTS AND CASE LAW AGAINST "NETTING"
2. MODEL PORTFOLIO DAMAGES
 - A. WHAT IS IT? A HYPOTHETICAL SUITABLE INVESTMENT
 - B. COMPARE THE ACTUAL LOSSES WITH THE MODEL PORTFOLIO LOSSES (OR GAINS) = THE DIFFERENCE CONSTITUTES MODEL PORTFOLIO DAMAGES
3. RESCISSIONARY DAMAGES
 - A. AVAILABLE MOST OFTEN IN CASES OF FRAUD OR STATUTORY SECURITIES LAW VIOLATIONS
 - B. GOAL: UNWIND THE TRANSACTION
 - C. PUT THE PARTIES BACK WHERE THEY WERE BEFORE THE TRANSACTION
4. ATTORNEYS' FEES
 - A. "AMERICAN RULE" APPLIES = EACH SIDE PAYS ITS OWN FEES
 - B. EXCEPTIONS:
 - i. STATUTE
 - ii. CONTRACT
 - iii. "EQUITY"
5. PUNITIVE DAMAGES
 - A. PURPOSE: PUNISH, AND DETER
 - B. RARELY AWARDED
 - C. IN THE "WORST OF THE WORST" CASES
6. EMOTIONAL DISTRESS DAMAGES
 - A. ALMOST NEVER AWARDED IN AN INVESTMENT DISPUTE
 - B. MORE COMMON IN PERSONAL INJURY OR OTHER TORT CASES

SECURITIES ARBITRATION “NUTS AND BOLTS”

1. FORUM: “FINRA”
(FINANCIAL INSTITUTIONS REGULATORY AUTHORITY)
 - A. ARBITRATORS (3), NOT JUDGES
 - B. PRIVATE, NOT PUBLIC
 - C. VENUE: WHERE INVESTORS RESIDES

2. “LIFE CYCLE” OF CASE:
 - CASE INITIATED BY FILING “STATEMENT OF ARBITRATION CLAIM”
 - RESPONDENTS RESPOND WITH FILING OF “STATEMENT OF ANSWER” (60 DAYS LATER)
 - APPOINTMENT OF ARBITRATORS & SCHEDULING OF HEARING
 - DISCOVERY (LIMITED: DOCUMENTS; NO DEPOSITIONS)
 - OFTEN SETTLEMENT DISCUSSIONS AND/OR MEDIATION
 - ARBITRATION HEARING
 - OCCURS ABOUT ONE YEAR AFTER FILING CASE
 - PARTIES PRESENT EVIDENCE AND WITNESSES
 - EXPERTS – ESPECIALLY IF TECHNICAL ISSUES
 - DURATION: USUALLY ONE WEEK OR LESS
 - AWARD: SENT TO THE PARTIES 2 TO 4 WEEKS AFTER HEARING

RESULTS OF SECURITIES ARBITRATION HEARINGS

1. ARBITRATION AWARDS ARE “MINIMALIST”
 - JUST A STATEMENT OF THE RESULT
 - NO STATEMENTS OF REASONING
 - NO DISCUSSION OF LEGAL AUTHORITIES OR PRECEDENTS
 - AWARDS HAVE NO LEGAL PRECEDENT VALUE UNLIKE COURT OPINIONS
2. RESULTS VARY WIDELY
3. STATISTICS
 - INVESTORS WIN LESS THAN 50% OF TIME
 - WHEN INVESTORS “WIN,” THEY USUALLY GET LESS THAN 100% OF LOSSES SOUGHT, AND OFTEN MUCH LESS
4. COMPARISON WITH COURT
 - JUDGES AND JURIES ARE BOUND BY LAW
 - RESULTS ARE CONVEYED (BY JUDGES AT LEAST) IN LEGAL OPINIONS
 - JUDGES (UNLIKE ARBITRATION PANELS) HAVE KNOWN TENDENCIES
 - MORE ROBUST DISCOVERY TOOLS IN COURT

EDITORIAL: FINRA ARBITRATION IS SOMEWHAT INDUSTRY-BIASED

- A. ARBITRATORS WANT TO GET APPOINTED IN THE FUTURE
 - BROKERAGE FIRMS ARE “REPEAT CUSTOMERS,” WHEREAS CLAIMANTS ARE NOT
- B. ARBITRATORS HAVE LOST MONEY IN “THE MARKETS” TOO
- C. MINDSET OF “SPLITTING THE BABY”
 - A. MAYBE DUE TO ARBITRATORS’ FINANCIAL SOPHISTICATION (WHICH ISN’T FAIR TO APPLY TO OTHER INVESTORS)
 - B. MAYBE DUE TO FINRA TRAINING EMPHASIZING APPORTIONMENT AND ASSIGNING OF COMPARATIVE RESPONSIBILITY

EVALUATION OF A POTENTIAL SECURITIES DISPUTE CASE

1. CASE EVALUTION PROCESS
 - TELEPHONE INTERVIEW
 - REVIEW STATEMENTS/NEW ACCOUNT FORM
 - DAMAGES ANALYSIS
 - DETAILED INTERVIEW
2. SCREENING OF CASES
 - A. IS THERE LIABILITY?
 - B. ARE THERE DAMAGES?
 - C. IS THE FIRM SOLVENT?
 - D. IS THE CLIENT CREDIBLE AND LIKEABLE - ALARM BELLS WHERE CLIENT:
 - IS TOO ANGRY
 - IS TOO SOPHISTICATED
 - HAS "SHOPPED THE CASE" TO LOTS OF OTHER LAWYERS
 - IS NOT TELLING COUNSEL "THE WHOLE STORY"
 - HAS CREDIBILITY ISSUES
3. I DECLINE 9 OUT OF 10 INVESTMENT DISPUTE CASES, BECAUSE:
 - A. NO WRONGDOING
 - B. WRONGDOING BUT NO LOSSES
 - C. WRONGDOING BUT LOSSES TOO SMALL
 - D. CONCERNED ABOUT CLIENT CREDIBILITY
4. LEGAL FEES:
 - A. MOST CASES ON CONTINGENCY BASIS (CLIENT PAYS LEGAL FEES ONLY IF SUCCESSFUL) - APPROPRIATE WHERE:
 - LIABILITY APPEARS STRONG
 - LOSSES ARE SIGNIFICANT
 - FIRM APPEARS SOLVENT
 - B. WILL ALSO HANDLE ON HOURLY BASIS WHERE APPROPRIATE
 - C. FREE CONSULTATION AND CASE ANALYSIS

“RED FLAGS” TO WATCH OUT FOR WITH FINANCIAL ADVISORS AND REGISTERED REPRESENTATIVES/BROKERAGE FIRMS

1. RUSHING YOU TO MAKE A DECISION
2. MEETING YOU OUT OF THE OFFICE
3. USE OF PERSONAL EMAILS AND CELL PHONES
4. INSTANTLY MAKING A SPECIFIC RECOMMENDATION OF PRODUCT OR STRATEGY WITHOUT TAKING TIME TO LEARN ABOUT YOUR NEEDS
5. NOT TAKING THE TIME TO MEET WITH YOU OR SPEAK TO YOU, OR ALWAYS RUSHING THROUGH MEETINGS OR CONVERSATIONS
6. TELLING YOU “DON’T WORRY” OR “DON’T READ YOUR STATEMENTS”
7. NOT ASSISTING YOU IN UNDERSTANDING THE INVESTMENT THAT IS BEING RECOMMENDED

“BEST PRACTICES” IN DEALING WITH FINANCIAL ADVISORS AND REGISTERED REPRESENTATIVES/BROKERAGE FIRMS

1. MEET WITH MORE THAN ONE ADVISOR
2. ASK LOTS OF QUESTIONS
3. TAKE YOUR TIME
4. DON'T INVEST IN SOMETHING YOU DON'T UNDERSTAND
5. DON'T BE RUSHED INTO ANYTHING
6. IF YOU SUSPECT SOMETHING IS WRONG, SPEAK UP
7. IF CONCERNS AND QUESTIONS ARE NOT ADDRESSED, ASK TO SPEAK WITH THE BRANCH MANAGER OR THE SUPERVISOR
8. IF CONCERNS AND QUESTIONS ARE NOT ADDRESSED, PUT IT IN WRITING
9. DON'T WAIT TOO LONG TO RAISE CONCERNS
 - A. SILENCE CAN BE INTERPRETED AS CONSENT
 - B. STATUTES OF LIMITATIONS

RESOURCES FOR INVESTORS

1. FINANCIAL INSTITUTIONS REGULATORY AUTHORITY (FINRA.ORG)

- “BROKER.CHECK” FOR BROKER DEALERS AND REGISTERED REPRESENTATIVES

2. SECURITIES & EXCHANGE COMMISSION (SEC.GOV)

- FORM ADV FOR REGISTERED INVESTMENT ADVISORS (“RIA”’S)

3. CALIFORNIA DEPARTMENT OF CORPORATIONS (CORP.CA.GOV)

- FORM ADV FOR REGISTERED INVESTMENT ADVISORS (“RIA”’S)

4. DEPARTMENT OF INSURANCE (INSURANCE.CA.GOV)

5. PRIVATE ATTORNEYS

A. MAKE SURE THEY SPECIALIZE IN SECURITIES ARBITRATIONS

B. PIABA (PUBLIC INVESTORS ARBITRATION BAR ASSOCIATION)

- WWW.PIABA.ORG