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The Art of Arbitration

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In securities arbitration, it all comes down to dollars and cents.

Investors with big losses often have no problem finding an attorney willing to arbitrate their claims against a broker or an analyst. But for the vast majority of smaller investors, it's an entirely different story.

The sad truth is that if you haven't lost a great deal of money playing the stock market, you'll have a hard time finding a lawyer willing to arbitrate your claim. That's often true even if an investor appears to have an airtight case against a broker or research analyst.

That's because lawyers in arbitration, just like attorneys in class-action lawsuits, tend to get paid on a contingency basis, meaning they get paid only if an investor gets some money back. Very often arbitration attorneys will take up to one-third of any award or settlement as the fees for their services.

If you do the math, it's easy to see why an investor with a claim for, say, \$10,000 in damages would have a hard time finding a lawyer willing to represent them, given all the time it takes to prepare a case. In fact, many securities attorneys won't take on an arbitration claim unless an investor has lost at least \$50,000.

That's not to say securities regulators haven't tried to make arbitration more accessible to small investors.

A Little Help

About a decade ago, the NASD, formerly the National Association of Securities Dealers, moved to simplify the arbitration process for investors with damage claims under \$25,000. In those smaller cases, an arbitration panel can decide a dispute without holding a hearing -- a time-consuming and costly procedure. The panel decides a dispute by simply reviewing all the documents submitted by the opposing parties.

It's a move intended to reduce the cost of smaller arbitrations. But simple doesn't mean easy. Arbitration, even without a hearing, is a quasijudicial process, and it can be difficult for nonlawyers to navigate.

"Many people don't understand the forms they get from the NASD and are supposed to fill out," said Romaine Gardner, director of the securities arbitration clinic at Brooklyn Law School.

Not correctly filling out a form, or failing to include the necessary documents to support a claim, can be a fatal mistake in arbitration. On that basis, a panel can reject your claim without even considering the merits of your allegation.



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One option for investors who can't find lawyers to represent them and don't feel comfortable doing it themselves is to seek out a law school clinic like the one at Brooklyn Law School. But here again, small investors may find slim pickings. That's because only a handful of law schools currently offer clinical programs to handle securities arbitration claims, and most programs can handle no more than a few dozen cases in a year.

"We've had well over 100 calls this year," said Jill Gross, director of the securities arbitration clinic at Pace University School of Law, which is well ahead of last year's pace. "But we have not filed more claims because we have limited resources."

Another place to turn for help is the local bar association in your city or state. Many bar associations can refer you to lawyers who specialize in representing small investors.

For more information on securities arbitrations, visit these Web sites:

<http://www.nasdaq.com/default.asp>

<http://www.sec.gov/answers/arbproc.htm>

<http://www.sec.gov/answers/arbclin.htm>

http://www.piaba.org/informed_investors_03.asp

http://www.lexisone.com/legalresearch/legalguide/practice_areas/adr_arbitration_mediation.htm

<http://www.seclaw.com/centers/arbcent.shtml>
