SECURITIES ARBITRATION ALERT 2022-17 (5/5/22)

George H. Friedman, Editor-in-Chief

SQUIBS:

- **FINRA Issues Discussion Paper on Expungement**
- **Our Promised Elaboration on the FINRA DRS 1Q Stats**
- **California Federal Court Finds PDAA Unconscionable**

SHORT BRIEFS:

- **FINRA Board Meets in Person Next Week. No Agenda Yet**
- **Second Circuit: Mediated Settlement Agreement is Binding**
- **Update: California Supreme Court will Not Review Scientology Case**
- **NFA Investor Newsletter Hits the Electronic Newsstand**

QUICK TAKES:

- ***Gulfstream Aerospace Corporation v. Oceltip Aviation 1 PTY LTD,* No. 20-11080 (11th Cir. Apr. 18, 2022) (*per curiam*)**
- ***Nelson v. Dual Diagnosis Treatment Center,* No. G059565 (Calif. Ct. App. 4 Apr. 19, 2022)**
- ***Matter of Republic of Haiti v Preble Rish Haiti SA,* 2022 NY Slip Op 02377 (App. Div., 1st Dept., Apr. 12, 2022)**
- ***G.distributors LLC v. Scanlon*, FINRA ID No. 18-00566 (New York, NY, Mar. 21, 2022)**
- ***Witkowski v. Taylor Capital*, FINRA ID No. 19-01916 (Chicago, IL, Mar. 24, 2022)**

ARTICLES OF INTEREST:

- **M. Levi, *Mediating Commercial Disputes: Understanding the Process to Maximize the Benefits*, CPR Blog (Apr. 26, 2022)**
- ***Expungement in the States' Crosshairs*, JDSupra (Apr. 27, 2022)**
- ***SEC Charges Archegos and its Founder with Massive Market Manipulation Scheme*, www.sec.gov (Apr. 27)**
- ***FINRA Revives Expungement Proposal that Died After Pushback*, FinancialPlanning (Apr. 28, 2022)**
- ***Finra Revives Push To Revise Reps' Record Expungement*, FA Magazine (Apr. 28, 2022)**
- ***Cetera Ordered to Pay Ex-FA $3M Over Defamation Claim*, Financial Advisor IQ (May 2, 2022)**

DID YOU KNOW?

- **AAA Has Administered More Than 7 Million Cases Since Its Founding**

A NEW SEARCH FEATURE. *From its launch in mid-2020, the* Alert's *Website, www.secarbalert.com, has had a feature allowing visitors to search for and access without charge back issues of the* Securities Arbitration Commentator (*provided courtesy of the Securities Arbitration Commentator, Inc*). *We are pleased to announce that we have launched a similar search portal for back issues of the* Securities Arbitration Alert, *available here. Visitors can search back issues for 2020 and 2021, using key word and date parameters. Searches return a link to PDFs of back issues, which then may be key word searched. Back issues for 2022 will be added in early 2023. Best of all, the new feature is free.*

SQUIBS: IN-DEPTH ANALYSIS

FINRA ISSUES DISCUSSION PAPER ON EXPUNGEMENT. ***Nearly a year after withdrawing a rule change proposal on expungement, FINRA has issued a "Discussion Paper" on the topic.*** As reported in SAA 2021-22 (Jun. 3), FINRA in **May 2021** temporarily withdrew a proposal for improving the expungement process -- SR-FINRA-2020-030 -- which had its origins in the Dispute Resolution Task Force and its *Final Report and Recommendations*. A Press Release, *FINRA Statement on Temporary Withdrawal of Specialized Arbitrator Roster Rule Filing*, announced: "Following consultations with the SEC staff, we temporarily withdrew from SEC consideration our rule filing establishing specialized arbitration panels for expungement requests so that we can further consider whether modifications to the filing are appropriate." The two-page regulatory filing provided no further insights. More recently, we reported in SAA 2022-03 (Jan. 27) that FINRA President and CEO **Robert Cook** last **January** said the SRO would be focusing this year on expungement. As reported January 21 by *AdvisorHub*: "In the next few months, Finra will release a white paper to provide 'some data and statistical analysis and discussion' regarding expungements as well as some 'alternative approaches' to brokers' requests to remove client complaints from their Central Registration Depository records, according to the self-regulator's CEO."

The Original Rule Proposal

As discussed in SAAs 2020-37 (Oct. 7) & -36 (Sep. 23): "The proposed change, which incorporated comments and suggestions received on Regulatory Notice 17-42, was to amend the *Codes* to: '(1) impose requirements on expungement requests (a) filed during an investment-related, customer initiated arbitration ("customer arbitration") by an associated person, or by a party to the customer arbitration on-behalf-of an associated person "on-behalf-of request"), or (b) filed by an associated person separate from a customer arbitration ("straight-in request"); (2) establish a roster of arbitrators with enhanced training and experience from which a three-person panel would be randomly selected to decide straight-in requests; (3) establish procedural requirements for expungement hearings; and (4) codify and update the best practices of the *Notice to Arbitrators and Parties on Expanded Expungement Guidance* (*Guidance*) that arbitrators and parties must follow. In addition, the proposed rule change would have amended the *Customer Code* to specify procedures for requesting expungement of customer dispute information arising from simplified arbitrations. The proposed rule change would also have amended the *Codes* to establish requirements for notifying state securities regulators and customers of expungement requests" (footnotes omitted).

New Discussion Paper

The Authority on **April 28** issued a 26-page *Discussion Paper – Expungement of Customer Dispute Information* following up on Mr. Cook's promise. While a comprehensive analysis is beyond the scope of our coverage, we offer a high-level synopsis and recommend the readers peruse *FINRA Revives Expungement Proposal that Died After Pushback*, appearing in in the April 28 *FinancialPlanning* blog. The *Paper* starts with a detailed review of the long history of the expungement story, followed by a

recitation of the current expungement process and supporting rules and guidelines. Next is data on "the extent of expungement in DRS's arbitration forum" and a description of the court confirmation requirement. There follows a long examination of concerns about expungement and the several steps FINRA has taken to address them. The *Paper* concludes by shifting to possible improvements, and suggests a dual-track approach of approving the proposed changes in the withdrawn rule while at the same time considering new ideas: "A potential alternative approach to expungement would be to develop an administrative process pursuant to which RFPs [FINRA-registered financial professionals] would seek expungement. This process could rely on FINRA and state securities regulators as decision-makers on expungement requests, in place of independent arbitrators in DRS's arbitration forum. Similar to the discussion above regarding any potential changes to the standards expressed in FINRA Rule 2080, development of an administrative process would need to balance the interests of securities regulators, investors, securities firms and the brokerage community in the information in the CRD system. In addition, development of an administrative process for expungement requests would raise the question of who is in the better position to determine such requests -- FINRA, state securities regulators, independent arbitrators in DRS's arbitration forum, the courts, or a combination of the foregoing." The *Paper* points out potential challenges and poses several questions.

Next Steps
The *Paper*: "is intended to inform and encourage a continued dialogue regarding potential changes to the process used to resolve requests to expunge customer dispute information." To accomplish this objective: "FINRA plans to organize discussions with other securities regulators and interested parties on the topics raised in this *Paper*, identify additional data or analysis that may help inform effective decision-making in this area, and consider further potential changes to the expungement regime beyond those that FINRA has already initiated."
*(ed: *Kudos to FINRA for taking the proverbial bull by the horns. **The Paper has an excellent "Expungement Initiatives Chronology "Appendix. ***We are certain the Paper will spur reactions, which we will follow.)*
return to top

OUR PROMISED ELABORATION ON THE FINRA DRS 1Q STATS. ***FINRA Dispute Resolution Services ("DRS") posted case statistics through March, with the overall case filing trends – with one exception – about the same as before. We summarized these stats in SAA 2022-16 (Apr. 28), and promised an analysis in this week's*** **Alert.** While we still caution that results after three months are a still somewhat small sample, we offer these headlines for the first quarter of **2022**: 1) overall arbitration filings through **March** – 632 cases – are down 19%; 2) cumulative customer claims declined by 29%; 3) industry arbitration filings are now *up* 4% (reversing last month's 5% cumulative decline); 4) mediation cases continue to rise; and 5) pending cases continue to decrease. Overall arbitration turnaround times were 17.5 months, with hearing cases now taking 18.2 months (both figures are slight improvements from last month). There were 236 mediation cases in agreement, a gargantuan 125% increase

(besting 2021's torrid plus 49% pace). The settlement rate remains very high at 92% (it had been 89% last year). There are now 8,361 DRS arbitrators, 4,019 public and 4,342 non-public. Pending cases stand at 3,594, a decline of 54 from **February**. We elaborate below on some key takeaways.

Controversy and Security Types: the Top Fives

A few years ago, DRS began sorting the controversy and security types in descending order. We follow that pattern below, showing the top five in each category (*ed: note that a single case can have multiple controversy or security types*): **Controversy Types in Customer Arbitrations**: 1) breach of fiduciary duty; 2) negligence; 3) failure to supervise; 4) breach of contract; and 5) misrepresentation. Numbers 4 and 5 traded places from full-year 2021. **Security Types in Customer Arbitrations**: 1) common stock; 2) real investment trust; 3) private equities; 4) options; and 5) mutual funds. "Business development company" dropped out of the top five, replaced by "options." The other categories carried over from 2021. **Controversy Types in Intra-Industry Arbitrations**: 1) breach of contract; 2) promissory notes; 3) libel, slander or defamation; 4) libel or slander on Form U-5; and 5) compensation. "Wrongful termination" dropped out of the top-five list and was replaced by "libel, slander or defamation."

Customer "Win Rate"

FINRA has a stat showing the percentage of cases where customers were awarded damages. It is not a "win" or "recovery" rate; it simply shows the percentage of the cases where awards were issued (about 15% of customer cases concluded) where a customer was awarded damages of *any* amount. Whether one finds this stat useful, it does allow year to year comparisons. This figure stood at 31% for all (i.e., hearings, special procedures, and paper) awarded customer cases in 2021, down from 32% in 2020 and 45% in 2019. Through 1Q 2022, this figure had stabilized at 32%. The picture was the same when only hearing cases are considered. There does seem to have been a "Zoom Effect" in that customers received damages in 44% of 39 cases with at least one evidentiary hearing conducted by Zoom, as compared to 31% of 13 cases conducted entirely in-person. We caution that the sample size for this stat is very small.

Pending Cases Continue to Decline

For months after the pandemic's onset in March 2020, the pending cases stat built up to a high of 5,415 open cases in **August 2020**. The last 19 months, however, have each experienced declines in pending cases, reflecting a 1,821-case reduction from 2020's high water mark.

Speaking of Mediation

There were 236 mediation cases in agreement for the quarter, a significant 125% increase over 2021. With 82 new mediations, March was another month with healthy mediation filings. Recall that, as reported in SAA 2021-46 (Dec. 9), Director of Arbitration **Rick Berry** attributed the dramatic increase to: the return to in-person hearings; ending waiver

of postponement fees for all cases (September 2021); comfort at being in person after inauguration of DRS's mandatory vaccination policy; growing use of Zoom for mediations; and the return of Mediation Settlement Month. The strong settlement rate also continues, with nine out of ten mediation cases (92%) continuing to result in a settlement.
*(ed: *If the trend holds, the 632 arbitrations filed for the quarter straight-lines to about 2,500 yearly arbitration filings, a weak year by any measure. Time will tell. **Overall and hearing processing times ticked down a bit in March, after increasing earlier this year. We will keep an eye on this one, since we again wonder if the resumption of in-person hearings in August 2021 is somehow linked to this stat. Common sense tells us it is easier to schedule and attend virtual hearings, than those conducted in-person. ***We also wonder whether industry "return to the office" and vaccine mandates will cause employment and promissory note cases to increase in 2022? So far, only the "libel, slander or defamation" category has increased. ****Again, kudos to FINRA DRS for eliminating the pending cases backlog. *****Past year stats can be found here.)*
return to top

CALIFORNIA FEDERAL COURT FINDS PDAA UNCONSCIONABLE. ***A U.S. District Court, applying California contract law, holds that the predispute arbitration agreement covering the case before it was both substantively and procedurally unconscionable.*** The decision, *Bielski v. Coinbase, Inc.*, No. C21-07478 (N.D. Cal. Apr. 8, 2022), a class action brought by a dissatisfied Coinbase user, therefore denies the defendant's petition to compel arbitration of the dispute.

Origin of the Dispute
Defendant Coinbase Inc. operates a currency exchange that also allows its users to trade in cryptocurrency. One of these users, Plaintiff Abraham Bielski, was the victim of a scammer who transferred more than $31,000 out of his digital wallet. When Bielski turned to Coinbase for help, he was unable to reach a human representative or to receive a satisfactory response. He then filed the class action on behalf of similarly situated Coinbase users, alleging that the currency platform violated the Electronic Funds Transfer Act and Regulation E. Coinbase petitioned to compel arbitration under an arbitration agreement in the user agreement Bielski signed. Bielski objected on the ground that the agreement was unconscionable.

Standards of Unconscionability
The arbitration agreement provides that: "the enforceability … of the Arbitration Agreement … shall be decided by an arbitrator and not by a judge." The first issue, therefore, is whether this delegation clause is unconscionable. The Court explains the relevant standard: "Under California law, substantive unconscionability relates to the fairness of an agreement's actual terms and assesses whether they are overly harsh or one-sided. Substantively unconscionable contract terms will shock the conscience…. A delegation clause lacking mutuality imposes an unfair burden that qualifies as unconscionable…. In other words, to be enforceable, a delegation provision, as well as an arbitration agreement generally, must have a 'modicum' of bilaterality."

A Nested and One-Sided Agreement
Turning to the case before it, the Court declares: "whether the delegation clause imposes an unconscionable burden that differs from a generic delegation clause requires backtracking through the nested provisions of Coinbase's "Arbitration Agreement" and the tripartite dispute resolution procedure it sets out…. The arbitration provision as a whole addresses only those disputes that have previously gone through the pre-arbitration complaint procedure. Because only Coinbase users can raise a complaint though the pre-arbitration complaint procedure, the arbitration provision imposes no obligation on Coinbase itself to submit its disputes with users to binding arbitration."

From Lack of Mutuality to Substantive Unconscionability
The Court recognizes that mere one-sidedness does not necessarily equate with unconscionability, so its analysis continues: "Pretextual or unduly onerous preconditions to arbitration, however, remain substantively unconscionable." Here: "Coinbase's tripartite complaint process requires users to jump through multiple, antecedent hoops before initiating arbitration…. Because the delegation clause imposes an onerous, unfair burden beyond that of a typical delegation clause, this order finds it substantively unconscionable."

Procedural Unconscionability
The final step is to determine whether the arbitration agreement is procedurally unconscionable: "Procedural unconscionability addresses the circumstances of contract negotiation and formation and concentrates on two factors: oppression and surprise…. 'Oppression occurs where a contract involves lack of negotiation and meaningful choice, surprise where the allegedly unconscionable provision is hidden within a prolix printed form.'" Here, the Court finds that the arbitration agreement is a contract of adhesion and its "broad prohibition on access to formal resolution procedures would surprise the average consumer for this type of service.[] This order concludes that, given the level of substantive unconscionability inherent in the delegation clause previously discussed, the level of procedural unconscionability merits the finding that the delegation clause is unconscionable and, thus, unenforceable." The Court further finds that the delegation clause is not severable from the arbitration agreement, and therefore unenforceable. For these reasons, the Court denies the petition to compel arbitration.
*(ed: *We must quibble with one aspect of the Court's Opinion: if "surprise" is judged by being hidden within a prolix form, why does the Court then cite a different problem, the procedural hurdles of the complaint process, as the basis for finding "surprise"? **This Squib was prepared by Harry A. Jacobowitz, President of HAJ Research and Writing LLC. Mr. Jacobowitz, a member of the Pennsylvania bar, and his firm perform legal research and writing for attorneys and handle substantive searches of SAC's Award database. He can be contacted at harryjacobowitz@optimum.net.)*
return to top

SHORT BRIEFS: CONCISE NEWS YOU NEED TO KNOW

FINRA BOARD MEETS IN PERSON NEXT WEEK. NO AGENDA YET. FINRA's Board of Governors will meet in person **May 11 – 12**; thus far, there is no published agenda. As usual, we will follow up after the meeting results are posted. The schedule for the rest of 2022 is: **July 13 – 14**; **September 21 – 22;** and **December 7 – 8**.
(ed: We'll tweet any news as soon as we have it and will cover the topic in a future Alert.*)*
return to top

SECOND CIRCUIT: MEDIATED SETTLEMENT AGREEMENT IS BINDING. An oft-repeated maxim about mediation is that the process is not binding. That may be true insofar as the mediator's authority to impose a settlement on the parties, but as the Second Circuit reminds us in *Murphy v. Inst. of Int'l Educ.*, No. 20-3632 (2d Cir. Apr. 26, 2022), a settlement agreement resulting from a court-annexed mediation can indeed be binding and enforceable. The parties' employment litigation was referred to the Southern District's court-annexed mediation program, resulting in a settlement signed by the parties, their counsel, and the mediator. About a week later, the employee-Plaintiff sought to revoke the settlement. Next: "The district court, over [employee] Murphy's objection, enforced the mediation agreement and entered judgment in favor of the Institute [employer]. On appeal, the Second Circuit unanimously affirms. Says the Opinion: "In sum, there can be no doubt that the parties here 'intend[ed] to be bound' by the mediation agreement, and the fact that they may have anticipated 'lawyers' embellishments' in a final formal agreement … in no way makes the mediation agreement unenforceable. To hold otherwise would defeat the very purpose of the mediation program and render the execution of mediation agreements a hollow and pointless exercise. In all but the most unusual circumstances, mediation agreements that include express language indicating that the parties have reached agreement on all material terms are presumptively Type I agreements – unless the parties explicitly reserve the right not to be bound by the mediation agreement's terms until a final agreement is drafted and signed" (citations omitted).
*(*Not clear to us is whether the Court was influenced by the mediation having taken place under its auspices. **A mediated settlement agreement at FINRA is certainly enforceable. See FINRA By-Laws Article VI, Section 3(b), which provides that the Authority: "may suspend or cancel the membership of any member or suspend from association with any member any person, for failure to comply with … a written and executed settlement agreement obtained in connection with an arbitration or mediation submitted for disposition pursuant to the Corporation's Rules.")*
return to top

UPDATE: CALIFORNIA SUPREME COURT WILL NOT REVIEW SCIENTOLOGY CASE. The California Supreme Court has declined a request that it review a decision overturning an Order compelling arbitration. We reported in the "Short Briefs" section of SAA 2022-03 (Jan. 27) on *Bixler v. Superior Court (Church of Scientology)*, No. B310559 (Calif. Ct. App. 2 Jan.19, 2021). There, the California Court of Appeal said: "The trial court granted the motion to compel, and petitioners sought writ

relief. We issued an order to show cause, and now grant the petition. Individuals have a First Amendment right to leave a religion. We hold that once petitioners had terminated their affiliation with the Church, they were not bound to its dispute resolution procedures to resolve the claims at issue here, which are based on alleged tortious conduct occurring after their separation from the Church and do not implicate resolution of ecclesiastical issues. We issue a writ directing the trial court to vacate its order compelling arbitration and instead to deny the motion." We reported in SAA 2022-05 (Feb. 10) that the church on **February 3** petitioned for a rehearing. The 40+ page filing asserted several bases for the Petition. Here's part of the introduction: "This Court became the ***first in the nation*** to hold that 'freely executed' religious agreements cannot be enforced over the First Amendment objections of a party who claims to be a 'non-believer.' This holding adopts a distinct rule concerning the enforcement of religious arbitration agreements that discriminates against religions and violates the Federal Arbitration Act ('FAA'). The Opinion contains numerous other unbriefed issues, mistakes of law, and misstatements of fact, all of which require rehearing" (emphasis in original). We can now report that, following denial of the rehearing request, the California Supreme Court on **April 20** denied a Petition for Review of the decision. A docket entry says: "The petition for review is denied. The requests for an order directing publication of the opinion are denied."
*(ed: *Email us at Help@SecArbAlert.com for a copy of the docket. **We suspect this won't be the end of it, which means SCOTUS is the next stop.)*
return to top

NFA INVESTOR NEWSLETTER HITS THE ELECTRONIC NEWSSTAND. The National Futures Association ("NFA"), which operates a dispute resolution forum, issues a periodic *Investor Newsletter* aimed at commodity futures investors. It's designed to keep investors up-to-date on recent NFA initiatives, events, and resources that investors may find helpful. In the second *Newsletter* of **2022**, distributed under a summary email dated **April 28**, NFA lists several highlights which we explore in the order presented: **Investor Education** reports on: *Money Smart Week 2022*, which was **April 9** to **16**; and *Financial Literacy Month*, which was **April**. The **Investor Protection** section contains information on: NASAA's *Informed Investor Advisory: Reassigned Investment Accounts;* CFTC's *Customer Advisory: Avoid Forex, Precious Metals and Digital Asset Romance Scams;* SEC's *Investor Bulletin: Crypto Asset Interest-bearing Accounts;* and an unlinked NFA *Reminder: NFA Has No Jurisdiction Over Non-Members*, which reads: "Please note that NFA does not have jurisdiction over firms or individuals that are non-Members. If you file a complaint against a non-Member, NFA will not investigate the matter as we do not have jurisdiction over non-Member firms or individuals. Filing a complaint with NFA will only delay the investigation of your complaint by the appropriate regulatory agency (e.g., the CFTC, the SEC or FINRA). We encourage you to file directly with the applicable agency." As usual, the *Newsletter* signs off with a list of the quarter's enforcement actions, with links to final decisions in each, complaints that were issued, and final orders in registration cases. The *Newsletter* Webpage also contains: 1) a link to BASIC; 2) an online complaint form; 3) a link to past issues of the *Newsletter* and 4) a subscription form.

*(ed: *Another informative issue. **The enforcement actions database allows searches by subject matter, such as arbitration. ***Stats may be found here; for 2021, NFA had just 22 arbitration cases filed – 19 investor and 3 intra-industry. ****A constructive criticism: better to issue the* Newsletter *before events have transpired.)*
return to top

QUICK TAKES: CASES AND AWARDS WORTH READING

***Gulfstream Aerospace Corporation v. Oceltip Aviation 1 PTY LTD*, No. 20-11080 (11th Cir. Apr. 18, 2022) (*per curiam*):** "Long story, short: if you want certain rules to apply to the handling of your arbitration, the contract must say so clearly and unmistakably. Otherwise, the Federal Arbitration Act ('FAA') will apply.[] The parties here did not do that. So the FAA's arbitral-award standards for review govern. And because Defendant-Appellant Oceltip Aviation 1 Pty Ltd. waived any argument under the FAA's arbitral-award standards that the arbitral award here should be vacated, the district court properly denied Oceltip's application to vacate the award and granted Plaintiff-Appellee Gulfstream Aerospace Corporation's application to confirm the award. We therefore affirm the judgment of the district court."

***Nelson v. Dual Diagnosis Treatment Center*, No. G059565 (Calif. Ct. App. 4 Apr. 19, 2022)**: "As we explain, Sovereign fails to demonstrate error. The trial court found it had the authority to determine preliminary issues of arbitrability such as the validity and enforceability of the enrollment agreement. On our de novo review of that written document, we agree. The trial court also correctly found the agreement was unconscionable; that finding moots any question of whether Brandon actually signed it or whether his parents would have been bound by it if he did. We therefore do not reach the authentication question, and we affirm the trial court's order denying Sovereign's motion to compel arbitration."

***Matter of Republic of Haiti v Preble Rish Haiti SA*, 2022 NY Slip Op 02377 (App. Div., 1st Dept., Apr. 12, 2022)**: "Petitioner failed to demonstrate that the arbitration clause contained in the parties' contracts, which were drafted by petitioner, is invalid under Haitian law. The Haitian Code of Civil Procedure recognizes that international arbitration in matters that involve international trade supersedes the general prohibition against government agencies participating in arbitration (see Articles 956, 971, and 973). Here, contrary to petitioner's claim, the contracts for the purchase and transport of fuel from abroad into Haiti clearly involves international trade. Among other things, the contracts contain terminology relating to international trade, require payment in US dollars to a US bank, and explicitly acknowledge the laws and regulations of other territories. Accordingly, the agreed-upon arbitration clause is not in violation of Haitian law and was properly enforced."

***G.distributors LLC v. Scanlon*, FINRA ID No. 18-00556 (New York, NY, Mar. 21, 2022)**: In this intra-industry award, a Panel explains why it has decided not to rule in favor of Claimant or Respondent broker's Counterclaim and Third-party Claim, as neither party (including the Third-party Respondent) presented any evidence -- documentary or

otherwise -- at the hearing for the Panel to make a ruling on the requested relief. *Provided courtesy of SAC's ARBchek facility (www.arbchek.com).*

***Witkowski v. Taylor Capital*, FINRA ID No. 19-01916 (Chicago, IL, Mar. 24, 2022)**: A customer alleging he suffered significant loses through the sale of a REIT investment called Northstar Healthcare is awarded compensatory damages from Respondent broker-dealer and broker. One Arbitrator dissents with the relief granted and would have awarded the customer more monetary damages. *Provided courtesy of SAC's ARBchek facility (www.arbchek.com).*

return to top

ARTICLES OF INTEREST: RECENT NEWS FROM THE ADR FRONT

M. Levi, *Mediating Commercial Disputes: Understanding the Process to Maximize the Benefits*, CPR Blog (Apr. 26, 2022): "Understanding the mediation process will help parties gain more advantages from the mediation itself. It is important for parties to realize that while settlement of their dispute might be the most desired outcome, an impasse does not mean that the parties have failed. If parties narrow the issues, understand the opposing side's point of view, or simply have an opportunity to be heard, it will be successful for the parties in the long run."

***Expungement in the States' Crosshairs*, JDSupra (Apr. 27, 2022)**: "State securities regulators have long expressed reservations about the use of the expungement remedy. Recently, we have observed a marked increase in the use of alternative (read: aggressive) efforts by states to impact the expungement process in connection with customer arbitrations. For example, state regulators have threatened to take, and in at least one instance have taken, steps to intervene in the arbitration process to oppose the awarding of expungement."

***SEC Charges Archegos and its Founder with Massive Market Manipulation Scheme*, www.sec.gov (Apr. 27**): "The Securities and Exchange Commission today charged Sung Kook (Bill) Hwang, the owner of family office Archegos Capital Management, LP (Archegos), with orchestrating a fraudulent scheme that resulted in billions of dollars in losses. The SEC also charged Archegos's Chief Financial Officer, Patrick Halligan; head trader, William Tomita; and Chief Risk Officer, Scott Becker for their roles in the fraudulent scheme."

***FINRA Revives Expungement Proposal that Died After Pushback*, FinancialPlanning (Apr. 28, 2022)**: "After FINRA's withdrawal of a broker expungement arbitration reform proposal, the regulator is now suggesting a 'two-track approach' that includes the SEC adopting the tabled rule.[] The reform proposal would have set up a specific roster of arbitrators selected at random to handle cases filed by financial advisors seeking expungement of client complaints, as well as giving more notice to state regulators about each proceeding. While critics of the existing system such as the North American State Securities Administrators Association and the Public Investors Advocate Bar Association

Foundation praised certain aspects of the proposal, their qualms and the regulator's talks with the SEC led FINRA to "temporarily" pull it back last May."

***Finra Revives Push To Revise Reps' Record Expungement*, FA Magazine (Apr. 28, 2022):** "The Financial Industry Regulatory Authority is resurrecting an effort to revise its expungement process, citing a variety of ways its reps push the system to eliminate complaints from their public records.[] Finra tried this before in 2020. But critics including the North American Securities Administrators Association (NASAA) and the Public Investors Advocate Bar Association (PIABA), said Finra's previous efforts to challenge expungements did not go far enough. Those organizations lobbied the Securities and Exchange Commission for greater reforms last year and shut down the effort: Finra announced last May it was temporarily withdrawing its reform plan."

***Cetera Ordered to Pay Ex-FA $3M Over Defamation Claim*, Financial Advisor IQ (May 2, 2022):** "A Financial Industry Regulatory Authority arbitration panel has ruled in favor of a former Cetera Advisors financial advisor who accused the firm of wrongful termination and defamation.... Last week, the arbitrators ordered Cetera to pay Fasanella $3 million in damages, as well as $10,000 in expert witness fees and the $375 non-refundable portion of the Finra arbitration filing fee, without explaining their reasoning, Finra says.[] Moreover, the arbitrators recommended the expungement of Fasanella's record, including changing the reason for termination to "voluntary," according to the award document."

return to top

DID YOU KNOW?

AAA HAS ADMINISTERED MORE THAN 7 MILLION CASES SINCE ITS FOUNDING. The American Arbitration Association has administered 7,107,289 cases since its founding in 1926. Also, this venerable institution has resolved 196,519 this year, through May 2. The stats are available as a banner on the AAA's landing page.

return to top

Send any messages or inquiries to: George@SecArbAlert.com

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