



SECURITIES ARBITRATION ALERT

SECURITIES ARBITRATION ALERT 2024-12 (3/21/24)

George H. Friedman, Editor-in-Chief

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DID YOU KNOW?

- Women Comprise a Majority of FINRA's Board

ALERT! THERE *WILL BE AN ALERT* NEXT WEEK. Alert readers know that we usually take a quarterly break in publishing the Securities Arbitration Alert at the end of each quarter. That would translate to next week's Alert. For a variety of reasons, however, we've decided to delay our customary break a few weeks. So, look for the Alert in your email inbox next week, as usual.

SQUIBS: IN-DEPTH ANALYSIS

FINRA BOARD MET EARLIER THIS MONTH. APPROVES NEW ARBITRATION RULE. *The FINRA Board met earlier this month and approved rule changes codifying the voluntary program accelerating case processing for elderly or seriously ill parties.* As reported in SAA 2024-10 (Mar. 7), the FINRA [Board of Governors](#) met in person **March 6–7**. The [Agenda](#) listed a dispute resolution action item:

“The Regulatory Policy Committee will review a proposed rule change to the Codes of Arbitration Procedure to accelerate case processing for elderly or seriously ill parties.”

A Brief History

As reported in SAA 2021-46 (Dec. 9), FINRA’s [Board of Governors](#) met in **December 2021** and among other actions approved a rule change proposal to codify and improve the existing FINRA Dispute Resolution Services [special program](#) to expedite administration of arbitration cases involving senior or seriously ill parties. FINRA CEO **Robert W. Cook**’s post-meeting [memo](#) stated: “The Board approved publication of a Regulatory Notice soliciting comment on proposed amendments to the Codes of Arbitration Procedure to accelerate case processing for seriously ill parties and parties who are 75 or older.” In keeping with the “new normal” for rule change proposals, the Board had authorized staff to publish a Regulatory Notice seeking comments, rather than a 19b filing with the SEC. In **March 2022** FINRA published [Regulatory Notice 22-09](#), *FINRA Requests Comment on a Proposed Rule to Accelerate Arbitration Proceedings for Seriously Ill or Elderly Parties*: “FINRA seeks comment on a proposal to accelerate arbitration case processing when requested by parties who are seriously ill or are at least 75 years old. The [proposal](#) would help ensure that these parties are able to participate meaningfully in FINRA arbitration by shortening certain case processing deadlines for parties and arbitrators under the Codes.”

Originally a Voluntary Program

The thrust of the proposal was to codify the existing [voluntary program](#) via which parties could agree to accelerate impacted cases. Under these proceedings, which have been in effect since **2004** (*ed: repeated verbatim*):

FINRA Dispute Resolution staff (staff) will endeavor to do the following on an expedited basis:

- Complete the arbitrator selection process;
- Schedule the initial pre-hearing conference;
- Serve the final award; and
- Determine whether the parties are interested in mediation.

Arbitrators are encouraged to consider the health and age of a party when:

- Scheduling hearing dates;
- Considering postponement requests; and
- Setting discovery deadlines.

Comments

The proposal garnered [15 comments](#), which we analyzed in SAA 2022-21 (Jun. 2). The comment letters – including those from PIABA, NASAA, and SIFMA – were almost all supportive, but with most suggesting further improvements. Our editorial comment in no. 2022-21 was: “What’s next? Most likely staff will return to the National Arbitration &

Mediation Committee or the Board with changes resulting from the comments received.” It seems we are at that juncture.

Board Authorizes Rule Filing

FINRA [posted](#) on its Website these results from the recent Board meeting: “The Board approved one rule proposal: modifications to proposed amendments to the Codes of Arbitration Procedure previously approved by the Board to accelerate case processing for elderly or seriously ill parties. These modifications were in response to feedback we received on a [Request for Comment on the previous proposal](#), which would lower the age at which parties would qualify for accelerated processing. The proposal will require SEC approval before going into effect.”

*(ed: *We’ll have to await the rule filing to see the changes made in response to the comments. **As we’ve said before, this is a welcome change since, when all is said and done, the existing [voluntary program](#) does not abrogate the time frames in the Codes.*

****The rest of the 2024 FINRA Board schedule is: May 8–9; July 24–25; September 18–19; and December 4–5.)*

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SHORT BRIEFS: CONCISE NEWS YOU NEED TO KNOW

UTAH SUPREME COURT: STATE’S FOREIGN JUDGMENT ACT APPLIES TO POST-AWARD INTEREST. [Sunstone Realty v. Bodell Construction](#), 2024 UT 9

(Mar. 7, 2024), is a unanimous holding in a case of first impression. First, the facts: “After arbitrating a dispute in Hawaii regarding construction defects in a condominium development, SunStone Realty Partners X LLC (SunStone) domesticated its Hawaii judgment against Bodell Construction Company (Bodell) in Utah. Bodell asked the district court to impose Utah’s postjudgment interest rate instead of Hawaii’s higher postjudgment rate. The district court complied with Bodell’s request.” Next, the arguments: “SunStone appeals, arguing that the Utah Foreign Judgment Act (UFJA) requires the court to apply the Hawaii postjudgment interest rate. See [UTAH CODE § 78B-5-301 to -307](#). Failing that, SunStone contends that provisions in its contract with Bodell require Utah courts to award postjudgment interest at the Hawaii rate. SunStone further suggests that even if the contract does not mandate the Hawaii rate, principles of comity do” (link to UFJA added by the *Alert*). And the holding: “Although the UFJA does not squarely address the issue, it does instruct Utah courts to treat a foreign domesticated judgment like a Utah judgment for purposes of enforcement. Postjudgment interest serves, at least in part, as an enforcement mechanism. Accordingly, the UFJA requires the imposition of Utah’s postjudgment interest rate. We affirm.”

(ed: Seems right.)

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PROF. KATSORIS HONORED BY FORDHAM LAW SCHOOL. Securities arbitration legend Professor **Constantine (“Gus”) Katsoris** was [honored](#) recently for his 60 years at Fordham Law School. He was presented the University’s *60-year Bene Merenti Medal* at the University Convocation on **March 3**. The *Bene Merenti*: “is bestowed upon faculty for every 20 years of service. Prof. Katsoris is the first in the

history of Fordham Law School to receive his triple for 60 years at the school.” Reads the ceremony program: “Constantine N. Katsoris, Wilkinson Professor of Law Emeritus... has been connected with Fordham for more than 70 years. He earned his B.S. in 1953, then graduated first in his class from the law school in 1957. During those years, he worked in the family business selling Greek olive oil and cheese. Gus was not away from Fordham for long— he joined the law faculty in 1964, as an expert in tax law. He was instrumental in building the curriculum in tax law up from one course to cover areas such as corporate tax, partnership tax, estate and gift tax, and international tax. He also helped to establish the law school’s low-income taxpayer clinic. A renowned securities arbitrator, he played a key role in founding the law school’s securities arbitration clinic.” Prof. Katsoris founded the Securities Industry Conference on Arbitration in the mid-1970s, the initial purpose of which was to develop a *Uniform Code of Arbitration* for the several exchanges that were then running arbitration programs, including NYSE and NASD (now FINRA).

(ed: Congrats to my colleague, mentor, and friend!)

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CPR ANNOUNCES HENRY AWARD WINNER. The International Institute for Conflict Prevention and Resolution (“CPR”) announced via a **March 7** [press release](#) that the **Hon. William H. Webster** is the 2023 *James F. Henry Award* recipient. Says the release: “Judge Webster has been active with CPR, where for decades he has provided his wisdom, integrity, and commitment. Currently an Emeritus CPR Board Member, Webster served on the Board for over 30 years and as Vice Chair for 14 years and as Chair for 4 years. His commitment to CPR’s mission of finding new and better ways to resolve conflicts has had an enduring impact on CPR.... Judge Webster served in the U.S. Federal Court for the E. D. Missouri as well as in the Eighth Circuit and is Chair Emeritus of the Homeland Security Advisory Council, as well as previous Chair and Vice Chair. Prior to joining Milbank in 1991, Judge Webster served as Director of the Federal Bureau of Investigation from 1978 to 1987 and as Director of the Central Intelligence Agency from 1987 to 1991. Judge Webster has been awarded the Presidential Medal of Freedom, the Distinguished Intelligence Medal, and the National Security Medal.” The Award is named after the late **James F. Henry**, who founded and later served as president and chief executive officer of CPR until his retirement in 2000. It: “honors outstanding achievement by individuals for distinguished, sustained contributions to the field of ADR.”

(ed: Hats off to Judge Webster!)

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[QUICK TAKES: CASES AND AWARDS WORTH READING](#)

[Herrera v. Cathay Pacific Airways Limited](#), No. 21-16083 (9th Cir. Mar. 11, 2024) [from the Court’s case summary]: “The panel reversed the district court’s denial of Cathay Pacific Airways Limited’s motion to compel arbitration in plaintiffs’ putative class action alleging that Cathay Pacific breached their contract by not issuing a refund following flight cancellations for tickets that they purchased through a third-party vendor.... The panel held that, when a nonsignatory seeks to enforce an arbitration

provision, an order denying a motion to compel arbitration based on the doctrine of equitable estoppel is reviewed de novo.” (*ed: An Alert h/t to Editorial Board member Peter R. Boutin, Esq., of Keesal, Young & Logan, for alerting us to this decision.*)

[Posada v. Cultural Care, Inc.](#), No. 1:20-cv-11862-IT (D. Mass. Feb. 28, 2024):

“Plaintiffs Karen Morales Posada, Amanda Sarmento Ferreira Guimaraes, Williana Rocha, and Sara Barrientos assert against Cultural Care, Inc. (‘Cultural Care Inc.’), an au pair agency: claims on their own behalf and on behalf of similarly situated au pairs who have opted in to this litigation for violations of the federal Fair Labor Standards Act; and claims on their own behalf and on behalf of putative classes and subclasses for violations of various state laws. Cultural Care Inc. has now moved to compel the named Plaintiffs and all opt-in Plaintiffs to arbitration and for other or alternative relief, based on two agreements.... For the reasons set forth herein, to the extent arbitration is sought based on a 2023 agreement between individual au pairs and Cultural Care Inc., the motion is DENIED without prejudice where Cultural Care Inc. has not identified any named or opt-in Plaintiffs who signed the 2023 agreement. To the extent arbitration is sought based on a contract signed by the Plaintiffs and another party, International Care, Ltd., the motion is DENIED where Cultural Care, Inc. has waived any right to enforce that arbitration provision, and in any event may not enforce it either as a third-party beneficiary or under the doctrine of equitable estoppel.” (*ed: An Alert h/t to Editorial Board member Peter R. Boutin, Esq., of Keesal, Young & Logan, for alerting us to this decision.*)

[Hernandez v. RNC Industries, LLC](#), No. 2:21-CV-04518 (E.D.N.Y. Mar. 6, 2024):

“Plaintiff Alex Hernandez (hereafter, ‘Plaintiff’) brings this putative class action against Defendants RNC Industries, LLC, Robert Dugan, and Richard Tonyes (hereafter, ‘RNC,’ ‘Dugan,’ and ‘Tonyes’ respectively; collectively ‘Defendants’) alleging: (1) failure to pay overtime wages in violation of the Fair Labor Standards Act (hereafter, ‘FLSA’) and New York Labor Law (hereafter, ‘NYLL’); and (2) failure to provide written notice of payrates, wage statements, and ‘other information’ as required by NYLL. (Compl. ¶¶ 48-64.) On February 4, 2022, Defendant moved to compel arbitration and stay or dismiss the complaint (hereafter ‘Motion to Compel’). (*See* Motion to Compel, ECF No. 16.) For the reasons that follow, Defendants’ Motion to Compel is GRANTED and this case is hereby STAYED. To the extent Plaintiff has any plausible claims against Defendants, those claims are to be brought properly before an arbitrator.”

[Lahoud v. Merrill Lynch](#), FINRA ID No. 23-01056 (Jersey City, NJ, Feb. 14, 2024):

An Arbitrator denies a broker's request for expungement of two customer complaints from his CRD record, despite the fact that a previous Panel's ruling denying the same two complaints was vacated in court. The Arbitrator determines that said broker did not prove that expungement of these two complaints is appropriate. *Provided courtesy of SAC's ARBchek facility (www.arbchek.com).*

[Petrillo v. Equitable Advisors](#), FINRA ID No. 23-01241 (Jersey City, NJ, Feb. 14, 2024): After denying Respondent broker-dealer's Prehearing Motion to Dismiss pursuant to Rule 13206(a) (Six-year Eligibility Rule) without prejudice, the Arbitrator awards

Claimant expungement of a customer complaint from his CRD record. *Provided courtesy of SAC's ARBchek facility (www.arbchek.com).*
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ARTICLES OF INTEREST: RECENT NEWS FROM THE ADR FRONT

Daphna Kapeliuk, [Israel Adopts the International Commercial Arbitration Law: Will the Courts Play Along?](#) Kluwer Arbitration Blog (Mar. 7, 2024): “On February 2024, Israel achieved a significant milestone in the promotion of international commercial arbitration with the enactment of the International Commercial Arbitration Law, 2024 (the ‘ICA Law’). The ICA Law, which is based on the UNCITRAL Model Law on International Commercial Arbitration 1985, with amendments as adopted in 2006 (the ‘Model Law’), is a substantial change to the existing arbitration legal regime governing international commercial arbitration.”

[New Updates to AAA Construction Rules Now in Effect](#), Lexology (Mar. 6, 2024): “Effective March 1, 2024, the American Arbitration Association (AAA) has revised its Construction Industry Arbitration Rules and Mediation Procedures (AAA Rules)... The revised AAA Rules embody several key changes, including those aimed at addressing technological advances and streamlining processes to promote efficiency and clarity within the construction industry.” (ed: See our coverage [elsewhere](#) in this Alert.)

[Final DOL Fiduciary Rule Lands at OMB, Think Advisor](#) (Mar. 9, 2024): “The Labor Department’s fiduciary rule has landed at the Office of Management and Budget for Review.[] Labor filed its final rule late Friday, and OMB reviews typically take up to 90 days.[] The revised fiduciary rule proposal, dubbed the Retirement Security Rule: Definition of an Investment Advice Fiduciary, will likely be finalized this year, with a Jan. 1, 2025, effective date, according to ERISA attorneys.” (ed: See our coverage in SAA 2024-11 (Mar. 15.))

[Ex-RayJay Broker Accepts Bar over Estate Dispute](#), Financial Advisor IQ (Mar. 11, 2024): “An ex-Raymond James financial advisor has accepted a bar from the industry rather than testify regarding allegations that he misappropriated estate assets while acting as its executor, according to a regulatory filing.”

[Professor Constantine Katsoris Honored for His 60 Years at Fordham Law School](#), The National Herald (Mar. 11, 2024): “Professor Constantine ‘Gus’ Katsoris was honored with Fordham University’s 60-year Bene Merenti Medal at the University Convocation on March 3. The Bene Merenti is bestowed upon faculty for every 20 years of service. Prof. Katsoris is the first in the history of Fordham Law School to receive his triple for 60 years at the school, his son Nick Katsoris, Executive Director of The Loukoumi Make A Difference Foundation, noted via email.” (ed: See our coverage [elsewhere](#) in this Alert.)
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DID YOU KNOW?

WOMEN COMPRISE A MAJORITY OF FINRA’S BOARD. According to a post on its Website: “As of September 6, 2023, the [FINRA Board](#) was 52% female and 29% ethnically/racially diverse. For more information on the Board’s commitment to diversity, click [here](#).”

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