

PIABA: NON-ATTORNEY REPRESENTATIVES ARE REAL AND GROWING “MENACE TO INVESTORS” IN FINRA ARBITRATION

NAR Firms Found to Include Individual Who Pled Guilty in Insurance Scheme and Brokers Barred from Industry; Unwary Investors Have None of the Protections of Dealing with Attorneys and Often Recover Little of Lost Funds.

WASHINGTON, D.C. – December 18, 2017 – Investors who are forced to rely on arbitration to deal with problem stockbrokers and brokerage firms need to think twice before they hire “non-attorney representatives” (NARs) to handle their cases, according to a major new report from the Public Investors Arbitration Bar Association (PIABA). In addition to often paltry single digit recovery levels for their clients, NAR firms have attracted a substantial number of individuals with checkered pasts, including stockbrokers barred for life from the securities industry and, in one case, an individual who pled guilty to his role in a million-dollar jewelry swindle. The PIABA report concludes that FINRA should eliminate the role of NARs in all but narrow circumstances.

Titled “*A Menace to Investors: Non-Attorney Representatives in FINRA Arbitration*” (available at <http://bit.ly/2CWIOFI>), the report concludes: **“Non-attorney representatives often do not maintain malpractice insurance, have no ethical code or constraints like attorneys do, and do not face potential sanctions from any regulatory or licensing body like a state bar association. Essentially, this system exposes the investor who was victimized by his or her broker to potential further victimization, with little chance of recovering damages caused by an unscrupulous or negligent NAR.”**

PIABA President and report co-author Andrew Stoltmann, attorney, Stoltmann Law Offices, Chicago, IL, said: **“Unfortunately, investors who get victimized by their broker or brokerage firm sometimes find themselves victimized for a second time when an NAR provides substandard and ineffective representation in their FINRA arbitration claim. While all licensed attorneys are not created equal, at least they have licenses, standards and ethical rules that set a high standard of care. NARs, who increasingly represent investors in FINRA arbitration, have no such rules, duties or standards. Further they are not trained in advocacy as attorneys are, and as a result, often do a poor job of aggressively advocating for their clients.”**

Report co-author David Neuman, partner, Israels & Neuman PLC, Seattle, said: **“Investors deserve better. FINRA has issued a regulatory notice seeking comments on the efficacy of allowing compensated NARs to represent parties in arbitration. PIABA is supportive of FINRA’s initial efforts to address this issue, and requests that FINRA adopt rules which would prohibit NARs from representing investors in arbitration, with limited exceptions.”**

FINRA Rule 12208 generally allows non-attorney representatives to handle cases for investors in its arbitration forum. But PIABA found that problems abound with NAR firms:

- Cold Spring Advisory Group (CSAG) is a New York City-based NAR firm owned by Michelle Ottimo. There are a number of “consultants” who work for the firm, including Michelle Ottimo’s husband, Louis Ottimo. According to FINRA’s BrokerCheck, Louis Ottimo was affiliated with seven different brokerage firms, four of which have been expelled from the securities industry. In July 2015, FINRA barred Louis Ottimo from the securities industry. He also filed a Chapter 7 bankruptcy in 2016. Frederick Amato is another CSAG representative. A review of FINRA’s BrokerCheck reveals that Amato was charged with one count of bookmaking in Florida in 1999. He was convicted for one count of gambling, a misdemeanor, and was sentenced to one-year probation.
- Stock Market Recovery Consultants (SMRC) is a NAR firm based out of Brooklyn, New York. SMRC was co-founded by Benjamin Lapin and Mitchell Markowitz. Conspicuously absent from Markowitz’s background described on the SMRC web site is the fact that he pled guilty in 2004 to fraud in a nearly one-million-dollar scheme involving jewelry. According to the PIABA report, Markowitz, who lost his

license as a public insurance adjuster for running the “insurance scam” but was never barred from the securities industry, is still permitted to represent investors as an NAR under the current rule.

- Investors Arbitration Specialists is a San Diego NAR operated by Arthur S. Leider. In 1994, Leider worked for the brokerage firm Lam Wagner, Inc. In November 1995, a customer of Lam Wagner, Inc., brought a civil complaint against Leider and John Winnick, alleging fraud in the offering and sale of stock, debentures, and warrants of Altus International Telecommunications, Inc., which were unregistered securities. Leider and Winnick were found jointly and severally liable to the customer for \$217,500, interest, and costs. The court also found that Leider and Winnick “converted [investor’s] money from the escrow account for their own personal use.”
- Investors Recovery Service (IRS) is a Navato, CA., NAR firm. IRS is operated by Richard Sacks, who previously owned and operated a brokerage firm called Sacks Investment Company, Inc. Sacks and his company were fined \$101,891.20 in January 1991 by the NASD, regarding allegations that Sacks charged unfair prices to customers with markups ranging from 5.4% to 100% above contemporaneous costs. Sacks was also alleged to have guaranteed a customer against a loss, used a customer’s account for a second inventory account for the firm, executed fictitious trades to facilitate a loan, and operated the firm without a financial and operations principal. Eventually, Sacks was barred from the securities industry in any capacity.
- Vindication Recovery Services is a Mount Sinai, New York NAR firm run by Paul Shechter, a former broker who worked for 11 different brokerage firms, six of which were kicked out of the securities industry. In 2013, FINRA brought a regulatory action against Shechter alleging that between January 2007 and April 2010 (while Shechter was with iTradeDirect.com Corp.), he engaged in abusive sales practices. In 2014, “without admitting or denying” the allegations against him, Shechter was fined \$25,000 and suspended from the securities industry for two years. The Illinois Securities Department also brought complaints against Shechter. Moreover, Shechter has also been the subject of five customer complaints. The complaints allege unauthorized trading, misuse of margin, and excessive commissions.

The PIABA report finds a disturbing pattern of problems with NAR firms:

- NARs have been alleged to charge investors \$25,000 in non-refundable deposits for representation; taken settlement money that the investors were not aware of; and represented some investors without their consent.
- The success rate of these NARs has been sub-par. For example, Cold Spring Advisory Group has been involved in at least 27 arbitration cases. In those cases, CSAG sought a total of \$2,352,274 on behalf of its clients. CSAG’s clients were awarded a zero in 19 out of those 27 cases, resulting in investors receiving a positive award in only 29.63 percent of CSAG’s cases, compared to the national average, which was most recently 41-42 percent. However, CSAG’s clients were likely only awarded a total of \$86,216, or 3.66 percent of the damages sought for all of its 27 cases. Other NAR firms are believed to recover even lower amounts for their clients.
- Several states do not permit NARs to represent parties in arbitration. Nonetheless, NARs may still be operating in those states, with little protection for investors.
- Some NARs have admitted to cold-calling prospective clients and soliciting them to initiate FINRA arbitration proceedings. Unfortunately, NARs’ use of these tactics, which are impermissible for licensed attorneys, are not governed by any regulator (like a state’s bar association) and subjects the investor to the possibility of abuse.
- Many state bars, like California, Florida, Iowa, and Texas provide the general public with disciplinary information about attorneys licensed in their states, which can be found by searching the states’ websites. Such information is not readily available for an NAR, if it exists at all. Because they are

neither regulated nor supervised, it is difficult for an investor to determine if a particular NAR has any disciplinary history.

The PIABA report reaches the conclusion that FINRA should bar the practice of allowing NARs to represent investors in FINRA arbitration, with very limited exceptions:

- First, immediate family members (spouses, siblings, children, or parents) should be allowed to represent their family members in a FINRA proceeding. Many elderly investors may need to rely on children or grandchildren to assist them through the process, and spouses should also be able to assist, if necessary.
- Second, there are many law schools that have established securities arbitration clinics and allow law students to represent customers in FINRA cases. Several of these clinics have received funding from FINRA. The clinics provide a valuable resource, in that they typically represent customer claimants with relatively small claims, often too small for many attorneys to be able to take.

ABOUT PIABA

The Public Investors Arbitration Bar Association is an international, not-for-profit, voluntary bar association of lawyers who represent claimants in securities and commodities arbitration proceedings and securities litigation. The mission of PIABA is to promote the interests of the public investor in securities and commodities arbitration, by seeking to protect such investors from abuses in the arbitration process, by seeking to make securities arbitration as just and fair as systemically possible and by educating investors concerning their rights. For more information, go to www.piaba.org.

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EDITOR'S NOTE? A streaming audio replay of this news event will be available on the web at www.piaba.org as of 5 p.m. EST/4 p.m. CST on December 18, 2017.