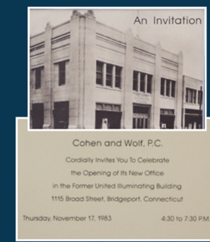

Questions and Answers about Securities Arbitration

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"I lost my money. What do I do?" Many lawyers have been asked that question by their clients who invested in the stock market. With the market on a roller-coaster ride and the losses of 2008 and 2009 on every investor's mind, what does an investor do if he or she thinks a broker was at fault? Do they have recourse? Can they get their money back without incurring prohibitive legal fees?

The answers to these questions depend on the facts of the investment. If an investor took a flyer on Citigroup when it was at $50 per share in 2007 because he believed that banks were rock-solid, that investor simply discovered the downside of the risk-return equation. If, on the other hand, a broker told him that the price would double in a month, sent him a letter the broker composed with the broker's own incorrect analysis of the financial and housing markets, or the broker traded in and out of the stock many times in a short period of time, the investor may be able to recover.

To determine whether there is even a chance at recovery the lawyer should ask a series of basic questions. First, one should determine when the securities were purchased. To bring an arbitration under the rules of the Financial Industry Regulatory Authority ("FINRA") the sale must have occurred no more than six years prior to filing the statement of claim. In addition to this eligibility provision, normal statutes of limitation also apply. If the customer believes that the broker lied to him, the action must be brought no more than two years from the date of discovery of the wrongdoing under both federal and Connecticut statutes of limitation. Even if the action can be brought within the two year period, it may only survive if it is brought within five years from the date of sale.

Some of the more common types of claims against a broker involve churning, the failure to follow instructions, and unsuitable recommendations. Churning most often occurs when the broker is in control of the account and the amount of trades suggest that the broker is trading to accumulate his own commissions rather than for the benefit of his client. The failure to follow instructions occurs when a customer gives a clear instruction to buy or sell and the broker disregards it. An unsuitable transaction occurs when the broker fails to evaluate whether a purchase or sale is appropriate for a customer and executes a trade which is inappropriate based on the customer's net worth, experience, and risk tolerance.

Under the securities laws customers can recover losses based on the wrongdoing, attorney fees, and costs. Punitive damages may be awarded if those damages are authorized by the laws of the applicable jurisdiction.

Most brokerage houses will compel a customer to arbitration even if the customer chooses to file an action in federal or state court. Since the 1987 decision of *Shearson v. McMahon, 482 U.S. 220(1987),* customers who have entered into an arbitration agreement with their brokers have been required to arbitrate. The arbitration process managed by FINRA, originally designed to be cost effective and to avoid the long delays that sometimes characterize litigation, now resemble mini-trials with pre-hearing discovery conferences, motion practice, document requests, and interrogatories. Even with these more complicated procedures, the typical case may often be completed within a year.

With the recent losses in the markets, lawyers will probably receive an increasing amount of calls like the one described above. Some pointed questions can save the client some anxiety and help the client determine whether to bring an action.

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