



PROGRAM MATERIALS
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"What is this Worth?"
Initial Evaluation of a Securities
Arbitration Matter for the In-House
Attorney.

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"What is this Worth?" Initial Evaluation of a Securities Arbitration Matter for the In-House Attorney."

A. How to evaluate the Statement of Claim- reading between the lines to find the real issues you'll face at hearing.

- a. Your first hurdle: FINRA has limited pleading requirements for Statements of Claim
 - i. FINRA only requires that to initiate an arbitration a customer must only sign a Uniform Submission Agreement and make a statement of relevant facts and remedies requested. Rule 12302.
 - ii. Most experienced Claimant's attorneys will take advantage of that rule and file a very short Statement of Claim and leave themselves room at the hearing to adjust their claims according to their view of the evidence.
 - iii. Respondent's counsel, having access to all documentation, and possibly, the registered rep., has to read between the lines and get the full story.
- b. Breakdown the Allegations
 - i. What are the root causes of action (not always framed well in the Claim)
 - ii. How specifically does the Claim allege that the Registered Rep/Investment advisor damaged the Claimant?
 - iii. What needs to be proven to support these allegations
 - iv. Is this a sales practice case? A product case? Both?
- c. Who is your Claimant (as portrayed in the Claim)
 - i. Profession
 - ii. Age
 - iii. Marital status e.g. divorced, widowed.
 - iv. Investment sophistication
- d. Who is your Financial Advisor?
 - i. Disciplinary History
 - ii. Years in the industry
 - iii. Years at the Respondent Firm
- e. Who is your adversary?
 - i. Experienced FINRA attorney?
 - ii. Is he/she a "settler."
- f. What are the alleged damages?
 - i. Actual losses
 - ii. Lost Opportunity
 - iii. Well Managed Account
 - iv. Other?

B. The nuances of contacting management, i.e. how to build a rapport and ask the right question

- a. Provide your background and experience

- b. Find out manager's past experience with complaints
- c. Explore relationship between management and FA
 - i. What is FA's reputation
- d. Does the manager know the Claimant i.e. has he/she met him or has there been any form of outreach.

C. Understanding the factors that determine if you need outside counsel.

- a. Complexity of case
- b. Complexity of the investment at issue.
- c. Who is your Adversary (see above)
- d. Potential exposure vs. Claimed Damages
- e. Is the FA a named Respondent
 - i. Even if handling in-house, does he/she need separate counsel

D. Knowing how to get the right documents to prepare for the interview with the financial advisor.

- a. Review the account statements.
 - i. What type of trading/activity occurred in the account.
 - ii. Was the account funded with cash or were assets delivered in from elsewhere?
 - iii. Did the asset allocation materially change?
 - iv. What were the investments?
 - v. Does the statement show if the trading was solicited/unsolicited?
 - vi. Does the statement clearly show gains/losses in the account.
 - vii. Was the activity in a fee based account or were the trades done on commission?
 - viii. What is your initial assessment of the activity vs the allegations in the Statement of Claim?
 - ix. Does anything stand out as odd or unusual
- b. Review the new account documents.
 - i. What is the customer profile?
 - 1. Age
 - 2. Profession
 - 3. Marital status e.g. divorced, widowed
 - ii. What are the investment objectives?
 - iii. What is the risk tolerance
 - iv. If more than one account, are the objectives and risk tolerance the same?
- c. Additional documents to review
 - i. Phone records
 - ii. On line internet access reports
 - iii. Commission/trading runs
 - iv. Financial Advisor notes
 - v. Any branch file

- vi. Emails between the client and financial advisor (if available)
- vii. Supervisory reviews/reports.
- viii. Firm research

E. Learning how to best Interview the financial advisor- getting the real story about what happened sooner rather than later

- a. Is the FA a named Respondent?
 - i. Yes- if not already done, address conflicts between broker and brokerage firm
 - 1. If representing both, you need a joint representation letter
 - 2. If not, consider joint defense agreement.
 - ii. No- Upjohn
- b. Make sure the broker has a copy of the statement of claim.
 - i. Consider FA privileged statement to assist in draft of Answer
- c. Explain the arbitration process.
 - i. Delays
 - ii. Discovery
 - iii. Expectations at a hearing
 - iv. Possibility of mediation/settlement
- d. Explore the account/client relationship.
 - i. How was the relationship established?
 - ii. What were the investment goals?
 - 1. Does that differ from the client profile?
 - 2. Is the client investment experience consistent with the paperwork.
 - iii. What was the activity?
 - 1. Who initiated it?
 - 2. What proof do you have that the client initiated it?
 - 3. Are notes available? Emails?
 - iv. What is the Claimant's total financial picture
 - 1. True net worth
 - 2. Assets outside of Respondent firm
 - 3. Overall Asset Allocation
 - v. How frequently did the client/broker communicate?
 - 1. In what form i.e. phone, email
 - vi. Do the notes match the activity in the account.
- e. Damages
 - i. Are there actual net losses
 - ii. Are the fees/ commissions excessive for the activity in the account?
 - iii. What percentage of the account value was lost?
 - iv. How did the account perform vs. the market?
 - v. Is there a viable alternative damage theory claim
 - 1. Lost opportunity damages
 - 2. Well managed Account theory damages

What is this Worth?

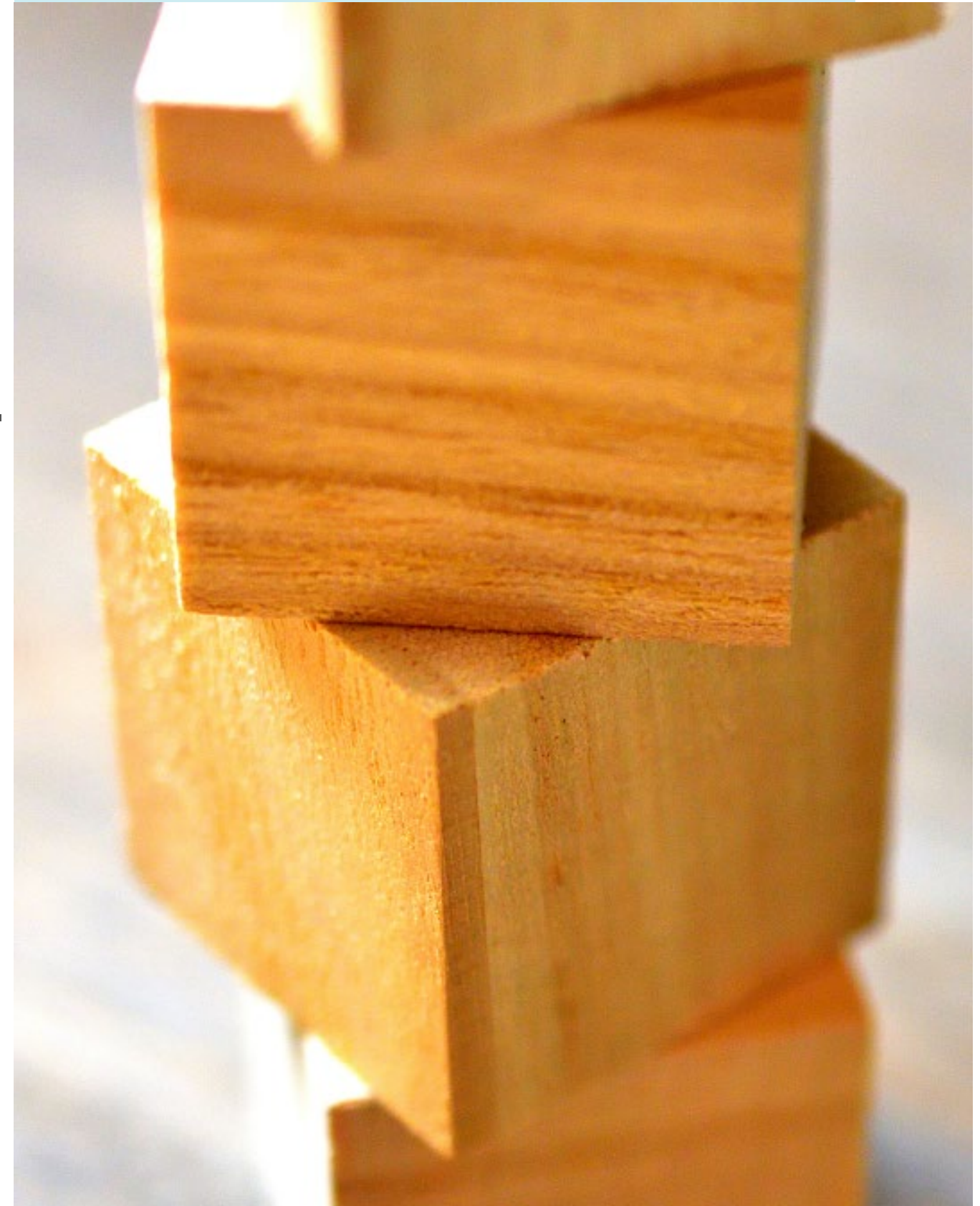
Initial Evaluation of a Securities Arbitration Matter for the In-House Attorney

Presenters: Joseph L. Calabrese, Sean J. Coughlin & Angela A. Turiano

Overview

TODAY'S DISCUSSION

- How to evaluate the statement of claim
- Nuances of contacting management
- Understanding the factors that determine if you need outside counsel
- Knowing how to get the right documents to prepare for the interview with the financial advisor
- Learning how to best interview the financial advisor



How to Evaluate the Statement of Claim

Reading Between the Lines to Find the Real Issues You'll Face at Hearing

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 - What are the root causes of action (not always framed well in the claim)
 - How specifically does the claim allege that the registered rep/investment advisor damaged the claimant
 - What needs to be proven to support these allegations
 - Is this a sales practice case
- Who is your claimant (as portrayed in the claim)
 - Profession
 - Age
 - Marital status e.g. divorced, widowed

How to Evaluate the Statement of Claim

Reading Between the Lines to Find the Real Issues You'll Face at Hearing

- Who is your financial advisor
 - Disciplinary history
 - Years in the industry
 - Years at the respondent firm
- Who is your adversary
 - Experienced FINRA attorney
 - Is he/she a “settler”
- What are the alleged damages
 - Actual losses
 - Lost opportunity
 - Well managed account
 - Other

The Nuances of Contacting Management

How To Build a Rapport and Ask the Right Question

- Provide your background and experience
- Find out manager's past experience with complaints
- Explore relationship between management and FA
- What is FA's reputation
- Does the manager know the claimant
 - i.e. has he/she met him or has there been any form of outreach

Understanding the Factors

That Determine If You Need Outside Counsel

- Complexity of case
- Complexity of the investment at issue.
- Who is your adversary (see above)
- Potential exposure vs. claimed damages
- Is the FA a named respondent
 - Even if handling in-house, does he/she need separate counsel

Knowing How To Get the Right Documents

To Prepare for the Interview with the Financial Advisor

- Review the account statements
 - What type of trading/activity occurred in the account
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Learning How to Best Interview the Financial Advisor

Getting the Real Story About What Happened Sooner Rather Than Later

- Is the FA a named respondent
 - Yes- if not already done, address conflicts between broker and brokerage firm
 - If representing both, you need a joint representation letter
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- Make sure the broker has a copy of the statement of claim.
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 - Is there a viable alternative damage theory claim
 - Lost opportunity damages
 - Well managed Account theory damages
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