



A Brief Introduction to Securities Arbitration and Litigation

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I recently spoke with a colleague of mine who reminded me that there are quite a few attorneys who know very little about Florida securities arbitration and litigation. Thus, the purpose of this article is to provide the reader with a brief overview of this area of the law as well as a quick introduction to the Florida Securities and Investor Protection Act, F.S. 517.011, et seq. (“FSIPA”).

Florida securities laws are designed to provide relief where a broker or advisor has breached a duty and the customer has suffered damages as a result. It is important to note that there are no guarantees in the stock market, and while many people lose money in the market, not everyone has a claim against their broker or financial advisor. With that being said, customers expect their advisors to act within their best interests. The vast majority of brokers and advisors have their clients’ best interests in mind, but the unfortunate reality is that our firm encounters clients who lost money in unsuitable investments because of negligent or fraudulent investment advice.

All broker/dealers are required to become a member of the Financial Industry Regulatory Authority (“FINRA”), a self-regulatory, non-governmental organization. Almost all disputes between customers and brokerage firms are arbitrated through FINRA arbitration panels because of agreements customers sign when they first invest with their broker. According to the latest numbers, FINRA oversees approximately 4,250 brokerage firms and 629,525 registered securities representatives.

As a condition to the broker/dealer’s membership in FINRA, they must agree to comply with the rules adopted by FINRA. The rules are much too voluminous to summarize in this article, but for present purposes I will focus on the FINRA “suitability” rule which is relevant to almost every one of our securities cases. The suitability rule requires that a brokerage firm have a reasonable basis to believe a recommended transaction or investment strategy involving a security is suitable for the customer, based on information about the customer obtained through reasonable diligence. A customer’s investment profile includes, but is not limited to, the customer’s age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs and risk tolerance. The rule also specifies that the broker must have an understanding of both the product and the customer.

A significant portion of our firm’s arbitration and litigation cases also rely on the fraudulent transactions provision of FSIPA found in F.S. 517.301. The section states that it is unlawful for a person in connection with rendering any investment advice or associated with the offer or sale of security, “[a] 1. To employ any device, scheme, or artifice to defraud; 2. To obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or 3. To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a person.” This

language is important because a broker may be held liable for any kind of misrepresentation in connection with the purchase or sale of security, whether is it intentional or unintentional.

In addition to F.S. 517.301, there are other important FSIPA provisions that we routinely rely upon such as: F.S. 517.07, which discusses the sale of unregistered securities; F.S. 517.12, which deals with the registration of dealers and associated persons; and, F.S. 517.211, which details the remedies available under FSIPA, which include rescission of the investment and attorneys' fees.

In addition to the foregoing, there are a myriad of common law claims in addition of those codified in FSIPA that are regularly applied in securities cases including fraud, negligent misrepresentation, breach of fiduciary duty and breach of contract.

To discuss potential investment claims, contact [Attorney Worth Graham](#).