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August 13, 2014

SR-FINRA-2014-028: Definition of Non-Public Arbitrator

I represented customers in NASD/FINRA Arbitration as an expert or attorney for approximately 24 years. Prior to that I worked in various positions in the industry and was later a director of a NASD registered public finance firm.

I oppose FINRA's continuing efforts to justify an unfair arbitration system operated for the sole benefit of its members. The reason there is the "perception of industry bias" is because it is biased. It protects members from defrauded customers and keeps their misconduct secret. If a (usually elderly) person is defrauded of her entire $500,000 retirement account and is then awarded $10,000 as compensation, according to FINRA, she wins. The bias lies at FINRA-DR which serves its masters in the industry and the arbitrator pool knows it. If you want to be thrown out of the pool, find against a major firm like Merrill Lynch. We've seen how that works.

If the SEC would require transparency, the question of whether arbitrators with past industry affiliation are biased would be a matter of statistical analysis. If FINRA believes so, it should present its evidence. But it has no evidence, only an alleged 'perception."

The Commission should require FINRA to open its records to the public. The Arbitrator Disclosure Form for every arbitrator should be a matter of public record just like the CRD, and made readily available to academic researchers. It should disclose every case to which that arbitrator is assigned and whether it is by selection of the parties or an appointment by FINRA. And the disposition of the case should be included; award or settlement and the amount. A settlement over a nominal amount is already a required disclosure on the CRD system. Showing only awards precludes judgments on 80% of the cases. It hides how FINRA appoints favored (anti-customer) arbitrators to multiple cases month after month. And chair qualified arbitrators often do their best work in discovery procedures where the customer learns she has no chance of prevailing at hearing because the chair won't allow it; resulting in a chump change settlement to recover costs in a meritorious case.

FINRA will never voluntarily allow the sun to shine on its operations. The Commission should stop acting as a rubber stamp for the recommendations of the FINRA staff. Sure, they make a lot more money, but that doesn't make them right. Prior to allowing them to reshuffle the cards in a marked deck, the Commission should demand transparency concerning all of the arbitrators and allow research on statistically real bias and not FINRA's self-serving "perception" when it wants to make a change. It might learn that elderly arbitrators are a worse problem because they can't read the documents, can't hear the testimony, and can't stay awake. But they've been doing it long enough to know who is supposed to win, and its not the customer.