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Securities Arbitration Alert **Single Arbitrator Option Awards 1998-2008** **SAA 2008-36 (9/23/08)**

REVIEWING SINGLE ARBITRATOR AWARD RESULTS: *Since 1998, parties in disputes involving more than \$25,000 and no more than \$50,000 have had the default option of utilizing a single arbitrator or demanding a three-person panel. We did a quick sweep of these cases to compare the outcomes when parties accepted the single Public Arbitrator to those where a three-person Panel was formed.* Notice to Members 98-90, which introduced the list selection system back in 1998 also marked the implementation of the \$25K/\$50K option, parties in that dispute range would be given a one-person Panel, unless any party requested a three-person Panel. We surveyed all of the Awards in SAC's Award Database relating to arbitrations filed by customers on or after the effective date of November 17, 1998, in order to compare "win" rates and "recovery" rates for those Awards decided by a single Public Arbitrator and those decided by a traditional, mixed Panel (i.e., three arbitrators with an industry slot).

We found 913 relevant NASD Awards, 763 of which were cases decided by arbitrators and not Stipulated/Consent Awards. Among those 763 Awards, 330 had been decided by a single arbitrator. These 330 single-arbitrator Awards reflected 133 customer wins and the average recovery for these 133 wins was 74% (we determine "average recovery" by dividing the total damages awarded -- \$3.8M -- by the total compensatory amount claimed -- \$5.1M -- in the winning cases.). The median amount awarded was \$25K. That "win" rate of 40% is pretty low, from a historical standpoint; at the same time, the recovery rate is relatively high.

Despite the default option calling for a single-arbitrator panel, we found that at least one of the parties opted for a three-person panel the majority of the time. We found 433 Awards where a three-person panel decided the dispute and 208 in which the customer won some monetary award. That calculates to a 46% "win" rate, somewhat higher than the single-arbitrator cases. We wondered if that higher "win" rate might be the result of "committee compromise," so the recovery figures were important to view. Again, we found a \$25K median recovery and, surprisingly, the average recovery rate was even higher -- \$7.4M awarded to winners -- 88% of the compensatory amount claimed -- \$8.4M -- to winners!

What about the new cases with claims between \$50-\$100,000 -- will customers fare better in outcome terms by using a single Public Arbitrator in these disputes? Virtually all of the Customer-Member Awards with claims in this range were decided by a mixed

Panel of (usually) three Arbitrators from 1998 to date. 1,256 decided Awards qualified in this claim range. For some reason, 21 of these 1,256 Awards had been decided by a single arbitrator, so we eliminated those from consideration. The remaining 1,235 Awards produced 622 “wins” for customers (50% “win” rate) and the median amount awarded was \$44K. In aggregate, arbitrators awarded \$38.3M to winning customers on compensatory claims totaling \$49.8M. That equates to a 77% average recovery rate.

The customer-initiated Awards on which arbitrators ruled during the 1998-2008 timeframe we surveyed totaled almost 10,000 in number. More than half of those involved compensatory claims exceeding \$100,000, with about a quarter qualifying as Small Claims and the ones in the \$25+ to \$100K category accounting for about 20% of the whole. Presumably, any case that qualifies as a single arbitrator matter will not be counted toward the All-Public Panel quotas to which the major brokerage houses have committed for the two-year Pilot (*see, e.g., SAA 2008-35 for a full listing*), so the larger firms, particularly, will be delivering the great majority of their customer arbitration caseload to Panels without Industry Arbitrators. (*ed: Claimants’ counsel are a savvy lot and this range of claim generally involves lawyers on each side. While impulse and peer inertia will no doubt cause many to choose All-Public options initially, it will be interesting to see if the action out of the gate remains the same at the finish line. October 6 marks the start of the “4-P” or Public Panel Pilot Program; we expect to see a surge of FINRA filings at that time.*) (SAC Ref. No. 2008-36, 9/23/08)