

SECURITIES ARBITRATION: PRACTICE AND FORMS

Second Edition

**W. Reece Bader
Burton W. Wiand**

JURIS

Questions About This Publication

For assistance with shipments, billing or other customer service matters, please call our Customer Services Department at:

1- 631-350-2100

To obtain a copy of this book, call our Sales Department:

1-631-351-5430
Fax: 1-631-673-9117

Toll Free Order Line:

1-800-887-4064 (United States & Canada)

See our web page about this book:
www.arbitrationlaw.com

COPYRIGHT © 2015
JurisNet, LLC

All Rights Reserved.
Printed in the United States of America.

ISBN: 978-1-937518-34-9

JurisNet, LLC
71 New Street
Huntington, New York 11743
USA
www.arbitrationlaw.com

Detailed Table of Contents

A Complete Synopsis for Each Chapter Appears at the Beginning of the Chapter

Acknowledgement

Preface

About the Authors

Chapter 1 The Regulatory Framework of Securities Arbitration

- § 1.01 Introduction: A History of Securities Arbitration
- § 1.02 Background: SEC Oversight of the SRO Arbitration Programs
- § 1.03 Relationship of SRO Arbitration Programs and SRO Disciplinary Departments
- § 1.04 The History of the Arbitration Rules Reform
- § 1.05 The Dispute Resolution Task Force: Recommendations and Results
- § 1.06 Other Projects to Improve Securities Arbitration
- § 1.07 Use of Predispute Arbitration Clauses by the Securities Industry in Customer Agreements
- § 1.08 Federal and State Legislative Attention to Securities Industry Arbitration

Chapter 2 Jurisdiction

- § 2.01 Introduction
- § 2.02 The Appropriate Arbitral Forum
- § 2.03 Statute of Limitations

Chapter 3 The Arbitration Agreement

- § 3.01 Introduction
- § 3.02 Existence of the Arbitration Agreement
- § 3.03 Scope of the Arbitration Agreement
- § 3.04 Waiver

Chapter 4 Determining Whether to Arbitrate or Litigate

- § 4.01 Introduction
- § 4.02 Availability of the Arbitration Alternative
- § 4.03 The Choice Between Arbitration and Litigation:
Applicable Rules of Decision
- § 4.04 The Choice Between Arbitration and Litigation: The
Decision Makers
- § 4.05 America Arbitration Association Rules: A Brief Summary
- § 4.06 JAMS: A Brief Summary
- § 4.07 The Choice Between Arbitration and Litigation:
Procedural Differences
- § 4.08 The Choice Between Arbitration and Litigation:
Miscellaneous Decisions

Chapter 5 Compelling or Resisting Arbitration

- § 5.01 Compelling and Resisting Arbitration
- § 5.02 Substantive and Procedural Law Governing Arbitrability
- § 5.03 Federal Arbitration Act
- § 5.04 Procedure to Compel Arbitration
- § 5.05 Jurisdictional Issues in Obtaining an Order to Compel
Arbitration
- § 5.06 Elements of Petitioner's Case
- § 5.07 Elements of Respondent's Case
- § 5.08 Is the Dispute Rendered Non-Arbitrable for Public Policy
Reasons?
- § 5.09 Stay of Litigation Under Section 3 Where Civil Action Is
Already Pending in State or Federal Court
- § 5.10 Interaction of Sections 3 and 4
- § 5.11 When a Lawsuit Presents Arbitrable and Non-Arbitrable
Claims; The Intertwining Doctrine
- § 5.12 Sanctions Against Losing Party on Motion to Compel
Arbitration or Stay Judicial Proceeding
- § 5.13 Appealability of Grant or Denial of Order Compelling
Arbitration

- § 5.14 Discovery in Aid of Proceeding to Compel Arbitration
- § 5.15 Provisional Judicial Relief Pending and in Aid of Arbitration

Chapter 6 Commencing an Arbitration Proceeding

- § 6.01 Introduction
- § 6.02 Representation Issues
- § 6.03 Rules for Commencing an Arbitration
- § 6.04 Selecting the Arbitration Forum
- § 6.05 Location of the Arbitration
- § 6.06 Initiating the Arbitration
- § 6.07 Answering the Complaint
- § 6.08 Counterclaims, Cross-Claims and Third Party Claims
- § 6.09 Joinder, Consolidation and Severance

Chapter 7 Pre-Hearing Matters

- § 7.01 Selection of Arbitrators
- § 7.02 Discovery
- § 7.03 The Importance of the FINRA Discovery Guide Documents and Additional Documents
- § 7.04 Pre-Hearing Conferences
- § 7.05 FINRA Pre-Hearing Motions
- § 7.06 Pre-Hearing Motions in AAA and JAMS Arbitrations

Chapter 8 The Conduct of the Hearing

- § 8.01 Background
- § 8.02 When Hearings Are Not Required
- § 8.03 Failure of a Party to Appear
- § 8.04 Who May Attend the Hearing
- § 8.05 The Creation of a Record
- § 8.06 Burden of Proof
- § 8.07 Order of Proceedings
- § 8.08 Reopening Hearings
- § 8.09 Motion for Reconsideration
- § 8.10 Rules of Evidence

- § 8.11 Testimony
- § 8.12 Documentary Evidence
- § 8.13 Adjournments
- § 8.14 The Arbitrators as Judges

Chapter 9 Remedies and Damages

- § 9.01 Introduction
- § 9.02 Damages
- § 9.03 Equitable Relief
- § 9.04 Expungement
- § 9.05 Disciplinary Referrals

Chapter 10 The Award

- § 10.01 The Deliberative Process
- § 10.02 Form of Award and Contents
- § 10.03 Public Availability of Awards
- § 10.04 Res Judicata and Collateral Estoppel
- § 10.05 Stare Decisis
- § 10.06 Post-Award Contact with Arbitrators

Chapter 11 Enforcing or Appealing an Arbitration Award

- § 11.01 Introduction
- § 11.02 Forum and Venue Issues
- § 11.03 Enforcing the Award
- § 11.04 Challenging the Award

Chapter 12 Mediation: An Alternative to Arbitration

- § 12.01 Introduction: What Is Mediation?
- § 12.02 History of Mediation in the Securities Industry
- § 12.03 The Benefits of Mediation
- § 12.04 The Mediation Process
- § 12.05 The Future of Mediation

Index

SOURCES: LAW AND RULES

(Available on CD Rom)

- Source 1 Arbitration and Mediation Forums
- Source 2 Federal Arbitration Act
- Source 3 FINRA Code of Arbitration Procedure for Customer Disputes
- Source 4 FINRA Code of Arbitration Procedure for Industry Disputes
- Source 5 FINRA Code of Mediation Procedure
- Source 6 FINRA Dispute Resolution Party's Reference Guide—National Edition
- Source 7 FINRA Dispute Resolution Party's Reference Guide—Simplified Cases
- Source 8A FINRA Discovery Guide 2011
- Source 8B FINRA Discovery Guide 2013
- Source 9 FINRA Uniform Forms Guide
- Source 10 FINRA Arbitrator's Guide 2014
- Source 11 FINRA Hearing Procedure Script – 3 Member Panel
- Source 12 Chicago Board Options Exchange Arbitration Rules
- Source 13 NFA Code of Arbitration
- Source 14 American Arbitration Association Commercial Dispute Resolution Procedures
- Source 15A American Arbitration Association Securities Arbitration Supplementary Procedures
- Source 15B American Arbitration Association Consumer Arbitration Rules
- Source 16 JAMS Comprehensive Arbitration Rules and Procedure
- Source 17 FINRA Uniform Submission Agreement—Claimant & Respondent Forms

APPENDICES: PLEADINGS AND FORMS
(Available on CD-ROM)**APPENDIX 1: ARBITRATION AGREEMENTS**

- Appendix 1A Arbitration Provisions from Clearing Agreement
Appendix 1B Excerpt from Form U-4 with Arbitration Provision
Highlighted

APPENDIX 2: COMPELLING AND RESISTING ARBITRATION

- Appendix 2A Letter Demanding Arbitration and Requesting that Civil Action Be Withdrawn
Appendix 2B Defendant's Motion to Compel Arbitration and Stay Action

**APPENDIX 3: COMMENCING THE ARBITRATION
PROCEEDING: SUBMISSION AGREEMENTS/
STATEMENTS OF CLAIM**

- Appendix 3A Claim Information Sheet
Appendix 3B Financial Industry Regulatory Authority Office of Dispute Resolution
Appendix 3C Letter to FINRA Requesting Consolidation of Claims
Appendix 3D FINRA Request for Response to Letter Requesting Consolidation of Claims

**APPENDIX 4: ANSWERS, COUNTERCLAIMS, AND THIRD
PARTY CLAIMS**

- Appendix 4A Respondent Statement of Answer and Affirmative Defenses
Appendix 4B Counterclaim and Third Party Claim

**APPENDIX 5: PRE-HEARING DISCOVERY AND MOTION
PRACTICE**

- Appendix 5A FINRA Pre-Hearing Conference Scheduling Order
Appendix 5B FINRA Dispute Resolution Case Information Sheet

TABLE OF CONTENTS

xi

- Appendix 5C Claimant's First Request for Production of Documents and Information to Respondent
- Appendix 5D Respondent's First Request for Production of Documents and Information to Claimant
- Appendix 5E Claimant's Response to Respondent's Request for Documents
- Appendix 5F Respondent's Response to Claimant's Request for Documents
- Appendix 5G Motion to Compel Production
- Appendix 5H Motion to Dismiss
- Appendix 5I Subpoena for Attendance at Arbitration Hearing
- Appendix 5J Order Directing Appearance at Arbitration Hearing
- Appendix 5K Respondents Witness and Exhibit List
- Appendix 5L Confidentiality Agreement

APPENDIX 6: SETTLEMENT AND MEDIATION PROCEDURES

- Appendix 6A Settlement Agreement and Release
- Appendix 6B Mediation Submission Agreement
- Appendix 6C FINRA Mediator Selection Letter
- Appendix 6D Submission to Dispute Resolution
- Appendix 6E JAMS Mediation Agreement

