

Re: Has NASD Dispute Resolution, which is **NOT** a sponsor of this email, informed you that....? (Part XXII)

"Nobody makes a greater mistake than he who did nothing because he could only do a little."

--- Edmund Burke (1727 – 1797)

## **Topic Index**

### **I. Lawsuit against SEC Based Upon Alleged Violations of FOIA and FACA**

You might recall that in Issue XX, we discussed whether a "survey" proposed by the Securities Industry Conference on Arbitration ("SICA") could be "independent." In Issue XXI, we presented excerpts of SICA Meeting Minutes, which revealed how "independent" was defined by SICA.

The following link leads to an annotated pdf filed-stamped copy of the Complaint for Declaratory and Injunctive Relief (Complaint) in [Greenberg v. United States Securities and Exchange Commission](#) (USDC Case No. CV 06-7878-GHK[CTx]).

The SEC uses SICA as a sounding board to obtain advice and recommendations on the securities arbitration process. The Complaint alleges that SICA is an advisory committee, dominated by the securities industry, and operates in violation of the Federal Advisory Committee Act. This relationship keeps the public investor mandatory arbitration process other than what many believe it could and should be.

The specific allegations contained in the Complaint deal with:

- (A) The filing of Petition for Rulemaking (SEC File No. 4-502)(Petition)<sup>1</sup> with the SEC in May 2005;
- (B) The SEC's referral of the Petition to SICA for advice and recommendations;
- (C) Objection to the SEC's referral stating, "[T]he Petition would not receive a fair hearing before the SICA as it sets forth complaints against most of the SICA's members' vested interests;"
- (D) SICA's refusal to allow attendance its meetings or to provide SICA documents;
- (E) SICA's negative comments<sup>2</sup> to the proposals presented in the Petition and dilatory tactics at SICA meetings attended by several representatives of the SEC;
- (F) The SEC's efforts to thwart a Freedom of Information Act request that seeks information related to SEC's relationship with SICA; and,
- (G) The SEC's failure to comply with its General Rule 192.<sup>3</sup>

The Complaint requests relief that would cause the SEC to:

- (A) Provide documents that detail its relationship with SICA; and,
- (B) Cease using SICA as an advisory committee.

<sup>1</sup> The Petition proposes to:

(A) Permit arbitration panel members, should they elect to do so, to conduct legal research, or, in the alternative, forbid Self-Regulatory Organizations (SROs), e.g., NASD, sponsored arbitration forums from restricting arbitrators from conducting legal research;

(B) Abolish the requirement that a securities industry arbitrator be assigned to each three person panel hearing customer disputes or, in the alternative, require that information presented to a panel of arbitrators by a securities industry arbitrator be revealed to the parties during open hearing;

(C) Require SROs to conduct continuing evaluations of ability of every arbitrator on their panels to perform his/her duties, including, but not limited to mandatory peer evaluations;

(D) Require SROs to train arbitrators in applicable law; and,

(E) Require SROs to reveal in pre-dispute arbitration agreements whether their arbitrators are required to follow the law in their decision-making process, the training of their arbitrators in the law, and their process, if any, to evaluate their arbitrators on a continuing basis.

<sup>2</sup> SICA, at its meeting on March 21, 2006, evaluated the proposals in the Petition as "unnecessary," "inappropriate," and/or "run counter to SROs goals," and claimed, "[S]trict application of the law would be harmful to investors." (Emphasis added.)

<sup>3</sup> "Any person desiring the issuance, amendment or repeal of a rule of general application may file a petition therefor with the Secretary. ... The Secretary shall ... refer it to the appropriate division ... for consideration and recommendation. Such recommendations shall be transmitted with the petition to the Commission for such action as the Commission deems appropriate." (Emphasis added.)

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NASD Dispute Resolution has requested that I inform you that my Email Newsletters "are not authorized to speak on behalf of NASD or NASD Dispute Resolution."

A summary of prior publications, other materials, e.g., annotated "studies" or "reports," and associated links are located at: [http://www.LGEsquire.com/LG\\_Links.html](http://www.LGEsquire.com/LG_Links.html).

My continuing thanks to those who have contributed to Parts I through XXII and/or shared their ideas/information. Please continue to forward these emails to your colleagues and associates and share your arbitration ideas and experiences with your fellow readers.

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