Registered Rep.

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HEADLINE: The Real **Arbitration** Nightmare

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BODY:

Henry Ford famously offered to deliver his Model T in any color, so long as it was black. Customers in the securities industry have roughly the same amount of choice when it comes to settling disputes - it's **arbitration** or nothing.

This is significant because the industry's **arbitration** process is fundamentally flawed, and this situation could end up undermining client confidence in the industry if it persists. The basic flaw is this: **NASD** member firms frequently wield far too much influence in **arbitration** proceedings. I've seen the effects of the firms' influence firsthand. Until recently, I worked as an **NASD** panel arbitrator in St. Louis, serving as the "public member" portion of a three-person team that also included an "industry member" and a chairperson. My **arbitration** career, if you could call it that, was relatively uneventful until a case in September 2004 opened my eyes to the underbelly of the **arbitration** process.

The Case at Hand

The case involved a broker for a large regional firm who sold a retiree a variable annuity. Soon after the sale, the investment went south, and the investor hit the broker with an unsuitability claim. The **NASD**-member firm's counsel agreed to represent the broker.

At the hearing, the evidence clearly showed that the firm and its broker were at best cavalier and at worst negligent in selling the annuity to this client. The rep bolstered this opinion; when I asked him what, in practical terms, a certain SEC disclosure regulation meant to him, he replied, "Nothing."

Our panel found for the petitioner. During the process of arriving at an award, I pushed for a figure one-tenth of the one my other panel members wanted. We eventually settled on a relatively high award, and submitted our decision to the **NASD.**

Shortly thereafter, while working on my expense reimbursements, I called a staffer in **NASD's** Chicago office to obtain a mileage voucher. When I mentioned the name of the case I had worked on, it was made clear to me that the case had acquired a certain amount of notoriety in the office - presumably because of the size of the award. It came as no surprise, then, when, a few weeks later, I received a form letter informing me I had been removed from **NASD's** list of arbitrators for unspecified reasons. I called the **NASD** official in New

York whose signature appeared at the bottom of the letter, but her secretary refused to put me through or to tell me why I was canned (even though the reason was probably sitting in front of her on her computer screen.)

You're Fired!

I've got a pretty good idea why I was dropped as an arbitrator: I ruled in a very decisive way against an **NASD** member firm, and I was part of the panel that - gasp! - refunded a defrauded customer's money.

I am not alone in intuiting these and other abuses at the **NASD.** Attorney and arbitrator Les Greenberg of Culver City, Calif. is waging a one-man crusade against the abuses in **NASD** dispute resolution system. In a series of emails to **NASD** arbitrators and on his Web site http://lgesquire.com, Greenberg is both pedantic professor and passionate muckraker. His blog is a forum where anonymous arbitrators can post opinions on **NASD** policies and practices and to air grievances. There's no shortage of participants. Some complain of attempts to influence their decisions.

"If an argument is stupid or not based on the facts in the case and I say so as a panel member, does that make me biased?" one poster asked. Another accused the dispute office of "stonewalling," preferring panel members "to just be there, be quiet and not ask for anything." Arbitrators, another said, are treated like the "downstairs help."

The point is this: An increasingly loud chorus of people is calling attention to a broken process - one that William Galvin, Massachusetts secretary of state, called "an industry-sponsored damage containment and control masquerading as a juridical proceeding." It's time for the **NASD** to open its ears and listen.

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