

ORAVECZ v. NEW YORK LIFE INSURANCE
Case: S177832, Supreme Court of California

Date (YYYY-MM-DD): 2009-12-23
Event Description: Petition for review denied

Notes:

Werdegar, J., was absent and did not participate.

For more information on this case, go to:

http://appellatecases.courtinfo.ca.gov/search/disposition.cfm?dist=0&doc_id=1925445

For opinions, go to:

<http://www.courtinfo.ca.gov/cgi-bin/opinions.cgi?Courts=S>

Public Investors Arbitration Bar Association

December 4, 2009

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Supreme Court of California
350 McCallister Street
San Francisco, California 94102-4797

Re: Oravec v. New York Life Insurance Co., et al.
Case No. S177832
Request of *Amicus Curiae* for Acceptance of Review

To the Honorable Justices of the Supreme Court:

I write on behalf of the Public Investors Arbitration Bar Association (“PIABA”) to urge the Supreme Court to accept review of the above-referenced appeal, for the reasons set forth in the Appellant’s Petition for Review, dated November 9, 2009. PIABA appeared as *amicus curiae* on a Petition for Rehearing in the Court below, which resulted in the court of appeal vacating its original opinion. Thereafter, the court of appeal issues an unpublished opinion. PIABA filed a Petition for Rehearing as to this opinion as well, which was denied. That opinion is now the subject of Appellant’s Petition for Review.

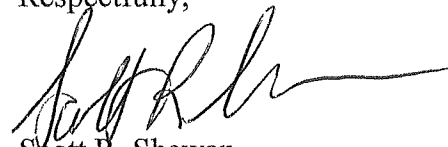
PIABA is a national bar association comprised of 461 attorneys located in 45 states, the District of Columbia and Puerto Rico, including 59 California members, who devote a significant portion of their practice to the representation of public investors in arbitration proceedings against stockbrokers and broker-dealers. These arbitrations are conducted almost exclusively by the Financial Industry Regulatory Authority (“FINRA”), formerly known as NASD Dispute Resolution, Inc. Collectively, since PIABA’s inception in 1990, its members have represented tens of thousands of public investors in these arbitration proceedings. The mission of PIABA is to promote fairness in arbitration proceedings and to seek to advance the rights of public investors through a variety of activities, including the submission of *amicus curiae* briefs.

PIABA has filed *amicus* briefs in courts throughout the land, including the United States Supreme Court, federal courts of appeal and several state supreme courts. PIABA appears as *amicus curiae* in court cases because virtually all broker-dealers today require public investors to sign pre-dispute arbitration agreements, and the vast majority of individual retail securities disputes are, as a consequence, resolved in arbitration. Cases litigated in court and brought to appeal are especially important to PIABA’s members and their clients because litigated retail securities cases are now very rare, and arbitrators look to these cases for guidance.

The decision of the Court below relies almost exclusively upon the case of *Asplund v. Selected Investments & Financial Equities, Inc.* (2000) 86 Cal.App.4th 26, a case which limited the responsibility of brokerage firms for conduct of its "independent contractor" registered representatives. This authority is diametrically opposed to the great weight of authority throughout the nation, and to the rules and decisional authority of the Securities and Exchange Commission and self-regulatory organizations. Practitioners in California, and throughout the country, have been confronted with the anomalous *Asplund* case in arbitration proceedings. This Court should accept review of the within appeal so that the rationale behind the *Asplund* decision can be fully examined. Such review is critical to the interests of individual investors and the promotion of fair, just and equitable principles of due process.

Thank you for your consideration of this important matter.

Respectfully,



Scott R. Shewan
PIABA President
California Bar # 119085

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