

PIABA: AS UNPAID ARBITRATION AWARDS REACH \$200 MILLION, CONGRESS MUST FORCE CREATION OF “ARBITRATION POOL” IF FINRA DOES NOT ACT

“The Problem is Not Solving Itself” and FINRA Discussions Seen as Inadequate; Super Bowl NFL Player Is Typical of Individuals Losing Life Savings, Getting \$0 of Awarded Funds.

WASHINGTON, D.C. – March 7, 2018 – Unpaid FINRA arbitration awards for 2012-2017 have ballooned to roughly \$200 million and resulted last year in 36 percent of investors who won their cases getting nothing and 28 cents of each dollar awarded going unpaid, according to a new report from the Public Investors Arbitration Bar Association (PIABA). The solution? If FINRA does not act on its own to create an “arbitration pool” to cover unpaid awards, Congress must take steps to establish one.

Available online at www.PIABA.org, the PIABA report concludes: **“In the five years from 2012 through 2016, a total of 268 awards (27 percent of the cases where investors were successful) or \$199 million in awards (29 percent of total damages awarded to investors) have gone unpaid. PIABA studied the 2017 award data, and found that the trend continues: 36 percent of the investors who won their cases collected nothing, and 28 cents of each dollar awarded have gone unpaid. The data reveals that the problem is not fixing itself, and the steps taken by FINRA thus far have not effectively addressed the problem.”**

The new 2018 report from PIABA confirms that the situation is worsening from what the Association reported in its 2016 report.

Andrew Stoltmann, report co-author, president of PIABA, and a Chicago-based arbitration attorney, said: **“Regardless of how strong the investor protection rules, regulations, and laws are, they are meaningless absent an investor’s ability to actually recover money when those rules, regulations, and laws are violated. Investors who fall prey to financial advisor misconduct all too often fall victim to a second abuse: the inability to collect an arbitration award issued against the financial advisor and/or firm found liable.”**

Hugh Berkson, former PIABA president, report co-author, and a Cleveland-based arbitration attorney, said: **“Of the potential solutions available here, an ‘arbitration pool’ remains the most viable and effective solution. FINRA is fully capable of funding the Pool out of fines levied on its members who violate its rules. FINRA member fines have been substantially larger than the unpaid awards for four of the last five years.”**

Bruce Wilkerson, former pro football player, who played tackle for three NFL teams from 1987 to 1997. Wilkerson started in Super Bowl XXXI for the Green Bay Packers, but was later harmed off the field by a brokerage firm’s wrongful misconduct.

Wilkerson said: **“FINRA arbitration threw me for a real loss. I am now 54 years old and I enjoyed a decade playing football for the Raiders, the Jacksonville Jaguars, and the Green Bay Packers. After retiring from football, I went to work as machinist at an Alcoa facility in Tennessee, where I’ve worked ever since. I lost \$610,000 to an unscrupulous broker. I was awarded damages but the firm I worked for had already stopped paying arbitration awards. I have not been able to collect one cent of my award. I thought I was going to be retiring comfortably in a few years and now will have to work for many more.”**

Adam Gana, board member, PIABA, and Chicago-based arbitration attorney, said: **“FINRA has reason to focus on these issues: unpaid awards undercut FINRA’s legitimacy as a self-regulatory organization credibly committed to investor protection. Self-regulation works best when the industry bears the costs of industry misconduct. When the industry internalizes the costs of misbehavior, it is incentivized to police its own ranks efficiently. If the industry does not**

internalize the true cost of misbehavior and instead allows arbitration awards to go unpaid, FINRA itself may not be incentivized to devote sufficient resources to address the issue.”

According to the PIABA report: **“FINRA is fully capable of funding the (Arbitration) Pool out of fines levied on its members who violate its rules. FINRA member fines have been substantially larger than the unpaid awards for four of the last five years. Alternatively, a Pool could be funded from FINRA’s profits, or an assessment on its members. An annual assessment of between \$23 and \$120 per FINRA-registered broker would have covered the unpaid awards for the last five years. A Pool’s benefit to aggrieved investors would more than outweigh the modest cost to FINRA or its members. PIABA renews its call on FINRA to create such a Pool.”**

In addition to FINRA’s data for 2012-2016, PIABA reviewed the arbitration awards issued in 2017, and determined that investor awards totaled \$73,280,880. PIABA then determined that \$20,649,164 of those awards were issued against brokers or firms which were no longer registered, a characteristic making it probable that the awards went unpaid. PIABA concluded that 35.92 percent of investor awards went unpaid (51 of 142 investor arbitration awards) and 28.18 percent of the dollars awarded to investors in 2017 were unpaid.

The PIABA report concludes: **“PIABA is encouraged that FINRA is seeking active engagement on this topic; however, FINRA has had decades to study this problem. Investors’ experience collecting awards is not improving, and action must be taken without further delay. In the absence of any viable solution other than a national investor recovery pool, FINRA must be required to enact such a Pool either voluntarily or as a matter of legislative requirement.”**

ABOUT PIABA

Public Investors Arbitration Bar Association is an international, not-for-profit, voluntary bar association of lawyers who represent claimants in securities and commodities arbitration proceedings and securities litigation. The mission of PIABA is to promote the interests of the public investor in securities and commodities arbitration, by seeking to protect such investors from abuses in the arbitration process, by seeking to make securities arbitration as just and fair as systemically possible and by educating investors concerning their rights. For more information, go to www.piaba.org.

MEDIA CONTACT: Patrick Mitchell at (703) 276-3166, pmitchell@hastingsgroup.com.

EDITOR’S NOTE: A streaming audio replay of the news event will be available on the Web at www.piaba.org as of 4 p.m. EST/3 p.m. EST on March 7, 2018.