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Ex-Ameriprise Broker Seeks to Vacate Finra Panel's 'Note' Award

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A California broker who last month lost a \$287,000 arbitration battle over promissory note balances owed to Ameriprise Financial Services has asked a court to vacate the award, citing procedural errors by the Financial Industry Regulatory Authority.

The self-regulator violated its own dispute resolution rules by re-classifying the chairman of a three-person arbitration panel as a "non-public" arbitrator after lawyers for each side had completed their review-and-ranking process for selecting arbitrators, according to a petition filed on July 6 in federal court in the southern district of New York.

Motions to vacate arbitration decisions are rarely filed, and hardly ever granted, because courts defer strongly to decisions rendered under procedures authorized by the Federal Arbitration Act, according to a Finra spokeswoman and lawyers. But Finra's reclassification of the panel chairman as an industry arbitrator meets the narrow conditions that validate a review, according to Joshua Brinen, the lawyer who filed the petition on behalf of James C. Duncombe, the former Ameriprise employee who is now an independent broker at Waddell & Reed.

"You can never go after the underlying merits of the case," Brinen said, "but we are arguing that Finra should set standards and then do the bare minimum of vetting. They should know when they do these things who's who in the zoo."

In reclassifying California lawyer A. Joel Klein as an industry arbitrator 13 months after Ameriprise filed its claim for repayment of "forgivable" loan balances in September 2016, Finra caused the arbitration panel to have "exceeded its powers" in rendering the June 2018 award, according to the vacate petition. The powers argument is one of the few that courts consider in determining fraud-like behavior by arbitrators, lawyers said.

In addition to violating rules for appointing arbitrators, which the petition argues are acknowledged in the promissory note agreements between Duncombe and Ameriprise, Finra's reclassification led the arbitrators to violate rules requiring panel chairmen to be public arbitrators and requiring three-person panels to be two-thirds public, according to the petition.

"I think that the case has legs," said Rogge Dunn, an employment lawyer in Dallas, Tex., who often represents brokers. But he cautioned that the rigid arbitration review standards make vacating the award "still an uphill battle."

The petition to vacate is at least the fifth that Brinen has filed for brokers in recent months (<https://advisorhub.com/broker-sues-to-vacate-stealth-promissory-note-award/>) that cites Finra arbitration procedure errors, and the second referencing a "public" classification issue (<https://advisorhub.com/broker-challenges-arbitrators-ordering-1-4-million-payment-to-morgan-stanley/>). The regulator itself is virtually immune from legal challenge, according to Brinen.

"The court will bounce your head out if you try to sue Finra," the New York-based lawyer said.

Finra spokeswoman Donna Hemans declined to comment on the pending litigation. The industry-sponsored regulator does not have exact data on the number of arbitration awards that are vacated, but "anecdotally, motions to vacate are rarely filed and seldom granted," she said.

Ameriprise spokeswoman Kathleen McClung declined to comment on the case.

Duncombe, a Santa Clarita, Calif.-based broker with 15 years of industry experience, was found liable on June 19 for paying the \$214,457 balance on promissory notes he signed in 2014 and 2016, along with \$20,235 of interest and \$43,295 of Ameriprise's attorneys' fees and costs.

He said he left Ameriprise after it reneged on an agreement to let him operate from a "concierge" office near his home that serviced most of his clients.

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