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DAILY BUSINESS REVIEW

FINRA Accuses High-Profile Miami Broker of Misleading Arbitration Panel

by Celia Ampel

The Financial Industry Regulatory Authority claims a prominent Miami securities broker is double-dipping by using both a lawsuit and arbitration to try to get customer complaints expunged from his record.

Patrick Dwyer of Merrill Lynch, Pierce, Fenner & Smith Inc. is the No. 5 wealth adviser in America and has \$3.1 billion under management, according to 2017 data from Forbes.

He also has seven client complaints on his record, mostly involving allegedly unsuitable investment recommendations, according to FINRA's BrokerCheck tool. The complaints were filed from 2001 to 2009 and have all been closed. Only one led to a settlement payment from Merrill Lynch, with clients receiving \$111,000 after alleging an investment was made earlier than they wanted.

According to FINRA, Dwyer sought to have the complaints expunged from his record in 2013 by filing litigation in Los Angeles. FINRA opposed the expungement, and a California judge ruled against Dwyer after a bench trial.

The broker then filed an arbitration claim in 2016 with only Merrill

SEE FINRA PAGE A2

Thick Skin: Defense Lawyers Explain How They Handle Attacks on Their Work

by Samantha Joseph

When Derek Lorenzo Johnson had almost exhausted all avenues for appealing his conviction, he turned on his lawyer.

Details in a Third District Court of Appeal ruling issued Jan. 31 show a victim — Johnson's half-brother — accused the defendant of arranging to have him shot in the head as they rode together in a car in a Miami neighborhood, as part of a plan to rob him of \$40,000 intended for a drug deal.

But Johnson's target before the appellate court was his own former lawyer, a court-appointed attorney who'd allegedly advised him against testifying in court to challenge the victim's story.

"It's part of it, but it takes a while to grow thick skin," said Broward Public Defender Howard Finkelstein, who was not involved in the case tried in Miami-Dade. "As a lawyer,

sometimes it's your turn to be in the barrel."

The strategy — claiming ineffective assistance of counsel — is popular for defendants like Johnson, who had already seen the Third DCA uphold his conviction in 2006 and the Florida Supreme Court deny his petition for a writ of certiorari in 2007. At least three other efforts failed since 2008, leaving Johnson with only one argument left for seeking reversal: a claim his trial counsel "effectively deprived (him) of the ability to make a knowing and voluntary decision about testifying."

"You have to take your ego out of it," said Broward Assistant Public Defender Gordon Weekes, who was not involved in the case. "I have never faulted someone for exploring all the appellate rights that they have. ... If that includes looking at my performance at the trial, I encourage them to do that."

SEE THICK SKIN, PAGE A6



Lawyers like Broward Public Defender Howard Finkelstein and Assistant Public Defender Gordon Weekes welcome the scrutiny.

FROM PAGE A1

FINRA

Lynch as a respondent. Neither Dwyer nor his employer told the arbitration panel about the California case, according to FINRA. Merrill Lynch did not oppose expungement of the complaints, and Dwyer won an arbitration award in his favor last July.

Now that the award is awaiting Miami-Dade Circuit Judge Miguel De La O's approval, FINRA has stepped in to oppose the confirmation, arguing Dwyer misled the arbitration panel. According to FINRA, when the panel asked Dwyer about the timing of his claim, he testified he "didn't know we could file for expungement fear-

lier]—you would be surprised how clueless we are."

Dwyer "now attempts to tax the resources of yet another judicial forum, this court, in his pursuit of relief to which he is not entitled," FINRA wrote in a Jan. 30 filing. "The court should not allow respondent to have the proverbial second bite at the apple given the preclusive effect of the state court action and FINRA's rule that a broker may sue or arbitrate the issue of expungement—but cannot do both."

Dwyer's attorney, Jeff Sonn of Sonn Law Group in Aventura, did not respond to a request for comment by deadline.

The case has drawn the interest of state regulators, with the Office of Financial Regulation filing motions to intervene and to vacate the award Monday.



GABRIELLE PIJCHON

The Financial Industry Regulatory Authority alleges broker Patrick Dwyer improperly used arbitration to get client complaints expunged from his record after losing litigation in California.

The office said it was not notified of the arbitration until it had concluded.

"Should the arbitration award be confirmed, the OFR's rights will be affected," wrote

attorney Stephen Masterson of the office's securities division in court filings. "The integrity of [FINRA's Central Registration Depository] is an essential element in the regulation of the securities industry. The deletion of information from the CRD affects OFR's co-ownership of the subject records and the agency's ability to carry out its regulatory functions."

FINRA is represented by David Mandel of Mandel & Mandel in Miami, who declined to comment.

A representative for Merrill Lynch, which is owned by Bank of America, also declined to comment.

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