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DECEMBER 9, 2020 | PUBLICATION

What Financial Advisors Need to Know about Motions to Vacate - Motions to Vacate Sometimes Succeed, but a Victory Might not be What You Seek

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Jeremy M. Halpern

MEDIA CONTACT

Wendy M. Byrne
wbyrne@shumaker.com

Participants in a FINRA Arbitration may have heard of a Motion to Vacate as a way of appealing a bad award. However, a Motion to Vacate is not an appeal at all, and it is not even the best way of avoiding a bad award. In reality, a Motion to Vacate rarely provides the relief that the participant seeks.

What is a Motion to Vacate?

To understand a Motion to Vacate, one must learn a little about how arbitration works in the modern legal system. The federal government and each state has statutes that provide parties with arbitration as an alternative to the court system. The winning party can bring the arbitration award to the courts to have the court “confirm” the award and enter a judgment that matches the terms within that award. The arbitration statutes also allow a party to have the award vacated—-in other words, nullifying the award as if it were never entered.

However, a Motion to Vacate is not the same as an appeal. When deciding a Motion to Vacate, the court cannot make a decision on the merits of the case. In fact, courts are often prohibited from vacating an award even when the arbitrators made a mistake in fact-finding or mistakenly applied the law. The court simply determines whether the rules of arbitration were followed by the arbitrators.

The most common misconception that financial advisors have is the belief that they can win a Motion to Vacate if the panel makes an adverse decision either in the discovery phase of arbitration, or as a part of the award itself. As stated above, the courts will not vacate an award due to a mistake, even if the mistake is critical to the outcome of the case.

What do I need to win a Motion to Vacate?

Because the right to file a Motion to Vacate is created by statute, this same statute strictly defines the limited circumstances when an award can be vacated. After all, letting parties re-litigate the case in court would make the arbitration process rather pointless.

Vacating an award usually requires misconduct of the arbitrators, evident partiality of the arbitrators, or the arbitrators exceeding their authority under the rules of arbitration. Each state can vary, but generally speaking, the only time that courts will vacate an award is when the arbitration process was either demonstrably biased toward one of the parties, or when the rules of the forum were not followed.

What does winning a Motion to Vacate actually mean?

If a Financial Advisor wins their Motion to Vacate, the likely result is that the case is brought back to FINRA Dispute Resolution to be arbitrated all over again.

If the basis for vacating the award was limited to what happened at the final hearing itself,such as a refusal to postpone the hearing or to admit critical evidence,there is a possibility that FINRA will recall the arbitrators to rehear the case. If the basis for vacating the award was due to a problem with one of the arbitrators, or a problem with the entire arbitration process itself, then the case will restart with a new set of arbitrators.

In either circumstance, the parties are left with a problem of having to retry their case and hope for the best. The most expensive part of arbitration is preparing for and attending the final hearing. Accordingly, even in a Financial Advisor's best-case scenario of winning a Motion to Vacate, the parties still have to spend more money, time, and effort, before a decision is made. To best understand the nuances of Motions to Vacate, a Financial Advisor is well served to consult with attorneys who specialize in FINRA arbitration – such as Team Taaffe.