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ARTICLES

The Improbable Birth and Conceivable Death of the Securities Arbitration Clinic
Jill Gross

Opening the Floodgates of Small Customer Claims in FINRA Arbitration:
FINRA v. Charles Schwab & Co., Inc.
Teresa J. Verges

The SEC Adds a New Weapon: How Does the New Admission Requirement
Change the Landscape?
Paul Radvany

Informed Consent in Mediation: Promoting Pro Se Parties' Informed Settlement
Choice While Honoring the Mediator's Ethical Duties
Michael T. Colatrella Jr.

An Empirical Study of Arbitrators Acting As Mediators in China
Fan Kun

The Pepperdine Model: Learn First—Then Practice
Robert A. Uhl & Judith Hale Norris

NOTES

The Stop Online Piracy Act: The Latest Manifestation Of A Conflict Ripe For
Alternative Dispute Resolution
Steven Tremblay

International Commercial Arbitration, Anticipatory Repudiation, and the
Lex Mercatoria
Kyle Winnick

THE PEPPERDINE MODEL: LEARN FIRST— THEN PRACTICE

Robert A. Uhl & Judith Hale Norris

I. THE BEGINNING OF THE PEPPERDINE INVESTOR ADVOCACY CLINIC AND PROGRAM

On January 8, 2010, FINRA's Investor Education Foundation awarded Pepperdine University School of Law's Straus Institute for Dispute Resolution a grant of \$250,000 to establish a comprehensive clinical education program in investor advocacy.

A. *Overcoming the Structural Clinical Problem*

The inherent problem in teaching students in a clinical setting, whether they be law students or any other students, is that students are positioned to represent individuals with real cases without having been educated on the subject matter of the securities arbitration clinic (hereinafter "the clinic"). Director/Professor Uhl was concerned about students who had had no education in securities arbitration but would be representing, *albeit* under Director/Professor Uhl's supervision, individuals with securities arbitration claims. While some clinic models teach the relevant substantive law in a clinical setting, Director/Professor Uhl believed that learning the substantive law of securities arbitration should precede the actual practice of law inherent in representing real clients. The "learn first, then practice" model has proved successful at Pepperdine in both the actual results of the securities arbitration cases tried by the clinic and the students' reactions to both the course and the subsequent clinic experience as detailed below. Therefore, Director/Professor Uhl designed a course on Arbitration Law in the Securities Industry. The Pepperdine Law School Academic Committee approved the course as a prerequisite for students interested in applying for the Investor Advocacy Clinic. Thereafter, Pepperdine notified all JD students completing their first year of the procedures and prerequisite courses necessary to apply to participate in the clinic during the second year of their JD program. In Fall 2010, Director/Professor Uhl and Associate Director Norris

welcomed the first class of students in Arbitration Law in the Securities Industry, which continues to date.

II. THE PURPOSE AND GOALS OF THE INVESTOR ADVOCACY CLINIC

As a prerequisite to participation in the clinic, Director/Professor Uhl teaches a weekly two-hour, two-credit course on arbitration law in the securities industry during the fall semester to clinic-eligible second-year law students and non-clinic-eligible third-year law students. The course gives students an in-depth legal, procedural, and practical knowledge of arbitration and mediation of investor disputes prior to their representation of clients.

Director/Professor Uhl emphasizes class participation, including a mock arbitration, and written assignments to give the students the opportunity to experience real-life practice scenarios. In the mock arbitration, students are divided into two sides: claimant's representative and defense counsel. Each side prepares and presents cross-examination questions and closing arguments. Director/Professor Uhl also requires the students to prepare a minimum fifteen-page research paper on topics selected by the students and approved by Director/Professor Uhl. Students are required to submit outlines of their research papers and meet with Director/Professor Uhl so that he can explain his edits and give feedback to improve their final product. One of the students' papers won recognition during a writing competition. The Public Investor Arbitration Bar Association published a student's paper in its Bar Journal, as noted in Section IV(B).

The students reported that the fall course gave them hands-on practice tips and the opportunity to select arbitrators, cross-examine witnesses, and listen to and ask questions of a leading defense counsel, mediator, and FINRA dispute resolution experts.

The course also gives the selected Investor Advocacy Clinic students in-depth knowledge of investor arbitration law and practice in the securities industry and the skills and knowledge required to "hit the ground running" with minimal start-up time when representing clinic clients under Director/Professor Uhl's supervision.

At the conclusion of the fall courses offered each fall, Director/Professor Uhl and Associate Director Norris select no more than five second-year law students who have met the student certification requirements of the State Bar of California and have

demonstrated academic achievement, research, writing, and public-speaking skills to represent investors in the Investor Advocacy Clinic. The clinic students are certified with the State Bar of California so they can represent parties under the direct supervision of a California-licensed attorney. The students must commit to continued participation in assigned clinic cases during the following spring and fall terms. During the summer, students are encouraged, but are not required, to be involved in their clinic cases. Students receive two units of credit for every semester enrolled in the clinic.

The selected students do not receive compensation, but instead benefit from serving the public interest, earning course credit, and gaining valuable experience representing clients in actual cases. Under supervision, the five students handle arbitrations and mediations before FINRA Dispute Resolution on behalf of California investors who have claims less than \$100,000, household incomes of less than \$100,000, and arbitral disputes with their securities brokers and/or brokerage firms. In the clinic, the students work closely with Director/Professor Uhl to prepare for mediations and arbitrations and to learn negotiation and critical lawyering skills.

III. INVESTOR ADVOCACY CLINIC ACTIVITIES

A. *Arbitrations and Mediations Before FINRA Dispute Resolution*

Director/Professor Uhl teaches students how to evaluate claims using the same rigorous analysis he employs in his own law practice representing investors. Although the clinic has received numerous calls from potential claimants, it will represent only investors with meritorious claims. The students and/or Director/Professor Uhl interview each individual to determine if he has met the clinic's eligibility standards. A large number of inquiries come from individuals who have invested with non-FINRA members and are not eligible for FINRA arbitration.

Each case takes approximately fourteen months to prepare and go to mediation or arbitration hearing. The clinic's first case settled in mediation in January 2012. One of the clinic's California-certified law students delivered the opening argument and negotiated the settlement under Director/Professor Uhl's supervision.

The second case went to hearing before FINRA Dispute Resolution in February 2012. The clinic's students prepared the case with Director/Professor Uhl and Associate Director Norris and participated in the hearing. After four days of hearing, the chairman of the arbitration panel ruled in favor of the claimant, awarding 100% of the compensatory damages requested at the hearing.

A third case went to a three-day arbitration hearing in March 2012. Two clinic students prepared the case with Director/Professor Uhl and participated in the hearing. In April, the single arbitrator ruled in favor of the claimant, granting him virtually all of his out-of-pocket expenses. Thereafter, respondents petitioned the California Superior Court in Los Angeles to vacate the award. The clinic petitioned the Superior Court to confirm the award. On August 4, 2012, a Los Angeles County Superior Court Judge issued an order confirming the award and denying respondent's petition to vacate.

A fourth clinic case settled in February 2013 after discovery was complete and the arbitration hearing dates had been scheduled.

The clinic had several other cases pending before FINRA Dispute Resolution. One case was scheduled for hearing in June of 2013. The other cases had arbitration hearings scheduled for late 2013 and 2014.

B. *Student Published Articles*

The Public Investor Bar Association ("PIABA") sponsors the annual James E. Beckley Student Writing Competition for law students interested in securities arbitration and securities law. The competition is open to all students who attend law school in the United States. PIABA announced during its Annual Meeting in October 2012, that Coy Garrison won third prize in the prestigious writing competition. Mr. Garrison was enrolled in Director/Professor Uhl's 2011 Arbitration in the Securities Industry class at the time he wrote his winning article entitled *Non-Traditional Customers in FINRA Arbitration: The Need For A Broad Interpretation of FINRA Rule 12200*.

PIABA also published Jeffrey Shawn Majors' article entitled *Discoverability of Wells Submissions: What They Are and How to Get Them* in the 2012 PIABA Bar Journal. Mr. Majors was a student in the Fall 2011 Arbitration in the Securities Industry class

and an Investor Advocacy Clinic student until his graduation in May 2013. Mr. Majors was also one of the authors of an article written in 2012 entitled *The Time For A Uniform Fiduciary Duty Is Now*, published in the St. John's Law Review in the fall of 2013.

IV. ACHIEVEMENT OF THE PEPPERDINE MODEL'S GOALS AND OBJECTIVES

Pepperdine University Law School conducts rigorous oversight of the Investor Advocacy Clinic and the fall course and evaluates their success on an ongoing basis. At the conclusion of the fall courses and clinics, the Law School requires all students to complete online evaluations of the courses and clinics. The Arbitration Law in the Securities Industry course and the clinics have received outstanding ratings from the students. For example, the Law School in 2012 posed 234 questions to students to assess the quality of Director/Professor Uhl's teaching of the 2011 fall course Arbitration Law in the Securities Industry. Of the 234 questions posed, Director/Professor Uhl received a 92% positive rating and a 71% strongly positive rating. The Law School also asked the students from the fall 2012 Arbitration Law in the Securities Industry course to rate Director/Professor Uhl's teaching. Director/Professor Uhl received a 92% positive rating and a 55% strongly positive rating.

The students were equally enthusiastic about their participation in the Fall 2011 and Spring 2012 Clinics. The Law School asked the five clinic students to rate the fall 2011 clinic on a five-point scale. The students gave Director/Professor Uhl a perfect score of 5.0 and gave the clinic an excellent 4.8 rating. The Law School asked the six students enrolled in the Spring 2012 clinic to respond to seventy-eight questions about their experience in the clinic. Director/Professor Uhl received a 99% strongly positive rating and a 100% positive rating from the students on the questions posed. In addition, the Law School asked the five students to rate the Fall 2012 clinic. The students gave Director/Professor Uhl a 100% positive rating and a 87% strongly positive rating.

The written evaluations for the course show that the students appreciated the hands-on practice tips they received from Director/Professor Uhl and the fact that he is a practicing investor attorney, available to the students 24/7, and open to sharing real-life experiences with and guidance for students on the key qualities required

to practice law successfully. The evaluations also show that the students were enthusiastic about the clinics. For example, the students stated that “Professor Uhl is a true expert in his field” and “Professor Uhl is very enthusiastic and generous with his time.”

V. OBSERVATIONS ABOUT THE PEPPERDINE MODEL

In the 2012 publication of *Inside Straus*, the words of Peter Robinson, Managing Director of the Straus Institute under whose auspices the clinic and course operates, capture the success of the clinic: “It’s an incredible opportunity for our students. It’s lawyering at its pinnacle. For the students to be coached and prepared and to be part of presenting peoples’ cases is a perfect law school educational experience. The fact that we had such a good outcome is a dream come true.”

Director/Professor Uhl offered his assessment of the Pepperdine Model in the 2012 edition of the same issue of *Inside Straus*: “The clinic and the underlying securities arbitration course that we teach are a triple-play for all concerned. Clients receive professional representation at no cost for claims that otherwise would go begging, the students learn practical skills generally not taught in purely doctrinal classes, and I personally satisfy a long-held desire to pass on by way of teaching the incredible experiences I have had representing investors for more than thirty years.”