MARSHALL DENNEHEY

Samuel E. Cohen

Chair, Securities and Investments Professional Liability Practice Group

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As Chair of the Securities & Investments Professional Liability Practice Group, Sam represents broker-dealers, registered representatives and registered investment advisors in state and federal court and in Financial Industry Regulatory Authority (FINRA) arbitration proceedings. Sam also represents broker-dealers, registered representatives and registered investment advisors before state and federal regulatory authorities as well as in FINRA investigations, examinations, inquiries and enforcement matters. As well, Sam represents registered representatives in FINRA expungement proceedings. Sam's practice also includes the defense of life insurance agents and brokers, real estate agents and title agents.

From 1996 through 1997, Sam served as a law clerk to the Honorable G. Craig Lord in the Court of Common Pleas of Philadelphia County. Sam graduated from Temple University in 1993 where he received a Bachelor of Business Administration and subsequently his *juris doctor* in 1996 from Temple University School of Law. At Temple Law School, Sam served as the vice president of his graduating class.

In 2019 Sam was appointed to serve on the Special Olympics PA-Philadelphia Executive Advisory Board. The Executive Advisory Board assists Special Olympics PA-Philadelphia by opening doors to key community and corporate contacts, raising funding for the program, providing high-level support of its strategic objectives and in general, advocating on behalf of its athletes and mission.

Education

- Temple University Beasley School of Law (J.D., 1996)
- Temple University (B.B.A., 1993)

Admissions

- New Jersey, 1996

Practices

- Securities & Investments Professional Liability
- Insurance Agents & Brokers Liability
- Real Estate E&O Liability
- Miscellaneous Professional Liability

- Pennsylvania, 1996

Honors & Awards

- AV® Preeminent™ by Martindale-Hubbell®
- Pennsylvania Super Lawyers Rising Star (2005-2008)

Associations & Memberships

- Pennsylvania Bar Association
- Philadelphia Bar Association
- Special Olympics Pennsylvania, Philadelphia Executive Advisory Board, 2019-Present

Classes/Seminars Taught

- *Best Interest Reviews: Decoding FINRA Rule 2330 (Variable Annuities)*, Financial Services Institute OneVoice Conference, January 28, 2025
- *Outside Business Activities: Overview and Best Practices for Broker-Dealers*, 7th Annual CNA Life Agent and Broker-Dealer Conference, October 5, 2023
- *Educational and Technology Tools that May Save You in the Long Run if You Are Named in an Arbitration/Lawsuit*, IBDC (Independent Broker Dealer Consortium) Annual Risk Management Conference, May 8, 2023
- *Hiring with Caution: How One Bad Apple Can Spoil Your Business*, Alternative & Direct Investment Securities Association (ADISA) Annual Conference and Trade Show, October 11, 2022
- *Claims Involving Life Insurance Impacting Life Agents and Broker-Dealers*, Independent Broker Dealer Consortium (IBDC) Annual Conference, September 2021
- *Current Issues Facing Broker-Dealers, Registered Investment Advisors and Their E&O Carriers*, Client seminar, June 22, 2021
- *Reconciling SEC and FINRA Examinations in Complex Products and Business Practices.* Independent Broker Dealer Consortium 10th Annual Risk Management Conference in Amelia Island, Florida, October 2018.
- *Department of Labor Fiduciary Rule,* Delaware County Estate Planning Council, September 2017
- *Reducing Regulatory Exposure: Properly Preparing for FINRA and SEC Regulatory Examination,* Independent Broker-Dealer Consortium Annual Conference, September 2017
- *Protecting Seniors, A Priority for FINRA, State and Federal Legislators, and Arbitration Panels,* 2016 Cadaret, Grant Advisor Forum, October 21, 2016
- *Legislative Update on Issues of Concern to Financial Advisors and Independent Broker Dealers*, Financial Services Institute, April 2010

Published Works

- "DOL's Retirement Security Rule Imposes New Fiduciary Standards on Financial Services, Insurance Industries," *The Legal Intelligencer*, May 10, 2024
- "FINRA Proposal Creates Urgency for Brokers Seeking Expungement of Customer Complaints," *The Legal Intelligencer*, May 4, 2023
- "FINRA, the SEC and Congress Aim to Safeguard Senior Investors," *The Legal Intelligencer,* May 12, 2022
- "FINRA Proposes Rule to Streamline Broker/Dealers' Oversight of Outside Business

Activities", Aon Advisor Solutions, Summer 2018 Newsletter

- “Protecting Seniors: A Priority for FINRA, Federal and State Legislators, and Arbitration Panels,” *Defense Digest*, Vol. 22, No. 3, September 2016
- "Protecting Seniors: A Priority for FINRA, Federal and State Legislators, and Arbitration Panels," *Financial Services Institute* newsletter, July 2016
- *Legal Updates for Securities,* regular contributor, 2015-present
- "Bum Rap? Wrap Fee Programs Under Scrutiny," *Westlaw Journal: Securities Regulation & Litigation*, October 2014
- *Case Law Alerts*, regular contributor, 2012-present
- "FINRA Requests Comment On Brokercheck Enhancements," *Defense Digest*, Vol. 18, No. 2, June 2012
- "Covenants Not To Compete: Why You May Not Be Able To Work For Your Employer's Competitors," co-author, AgentsofAmerica.org, January 13, 2009
- "FINRA Moves to Limit Dispositive Motions In Arbitration," *PLUS Journal,* Volume XXI, Number 1, January 2008
- "NASD Approves Merger With The New York Stock Exchange," *Defense Digest*, Vol. 13, No. 2, June 2007
- "Injured Plaintiff Has No Direct Action Against Tortfeasor's Insurer for Bad Faith," *Pittsburgh Legal Journal*
- "Customer Account Statements Must Include Reminder To Customers To Report Inaccuracies In Their Accounts In Writing," *Defense Digest*, Vol. 13, No. 2, June 2007
- "529 Plans: Tax Free Withdrawals Now Permanent, But Regulatory Concerns Remain," *Defense Digest,* Vol. 13, No. 1, March 2007
- "U.S. Supreme Court Continues Its Strong Support Of Arbitration," *Defense Digest*, Vol. 12, No. 2, June 2006
- "Agreements To Arbitrate Upheld By Pennsylvania State And Eastern District Court Despite Alleged Confidential Relationship Between Plaintiff Investors And Defendant Stockbrokers," *Defense Digest*, Vol. 11, No. 3, September 2005
- "Judge Reversed On Order Compelling Court Action To Arbitration," *Defense Digest,* Vol. 10, No. 1, March 2004
- "NASD Reminds Firm Of Their Discovery Obligations," *Defense Digest,* Vol. 10, No. 1, March 2004
- "NASD Members Are Warned To Give Investors Their Required Breaks," *PLUS Journal,* September 2003, Vol. XVI, No. 9 and *Defense Digest,* Vol. 9, No. 2, June 2003
- "Injured Plaintiff Has No Direct Action Against Tortfeasor's Insurer For 'Bad Faith'," *Pittsburgh Legal Journal,* June 9, 1998
- "No Assignment -- No Excess Garnishment," *Defense Digest*, Vol. 4, No. 3, June 1998

Significant Representative Matters

- Defense award obtained on behalf of our client, a registered investment advisor, in a FINRA arbitration involving alleged mismanagement and lack of transparency concerning a Donor Advised Fund. The arbitration panel denied the claims in their entirety and recommended expungement of the claim from our client's registration records.
- Defense award obtained in a binding FINRA arbitration in Columbus, Ohio on behalf of a financial advisor. The Claimant alleged unauthorized trading and breach of fiduciary duty in connection with individual stock trades. The Claimant further alleged breach of fiduciary duty in relation to the financial advisor’s recommendation that the

account be changed from a commission based to an advisory fee-based account.

- Defense verdict obtained on behalf of a broker dealer in a FINRA arbitration alleging over concentration in energy and precious metals investments.
- Defense verdict obtained on behalf of broker-dealer in arbitration in a suit brought by two retired broker Claimants who sought $5 million dollars in past and future benefits under a retirement program which paid override fees to retired brokers on books of business the retired brokers had developed decades ago.
- Expungement recommendation obtained in FINRA arbitration on behalf of financial advisor involving investment losses in an advisory account.
- Defense verdict obtained on behalf of a registered investment advisor and broker-dealer following a four day jury trial in Schuylkill County. The registered investment advisor and broker dealer were sued by their former client for investment losses. The Plaintiff was a paraplegic whose wealth was obtained through a jury verdict and settlements related to his injuries. The case was defended on the basis that the registered investment advisor met the standard of care and did not breach any duties owed to the Plaintiff, as well as the fact that the Plaintiff was net profitable in his investments. The Plaintiff sought to "cherry pick" losing investments from an overall profitable portfolio.
- Defense verdict obtained on behalf of a broker-dealer and a broker in a FINRA arbitration in New York. The Claimant, owner of a broker-dealer, alleged he was being charged an unreasonable mark-up on municipal bond sales and that he was the victim of elder abuse. In granting the motion to dismiss, the arbitration panel found that the Claimant failed to present a basis for his claim and recommended expungement of all references to the arbitration from the broker's records maintained by FINRA on the grounds that the claim, allegation or information was factually impossible or clearly erroneous. As well, the panel found the mark-ups on the municipal bonds sold to Claimant were not unfair or unreasonable and were not inconsistent with industry regulations.
- Defense verdict obtained on behalf of broker-dealer in FINRA arbitration where the customer alleged that a violation of her privacy had occurred, as well as asserting claims for fraud, breach of fiduciary duty, negligence and breach of contract.
- Defense verdict obtained on behalf of a broker-dealer and broker in FINRA arbitration alleging unsuitability and securities fraud in sale of a variable annuity. The defense was presented on the grounds that the variable annuity was suitable to the investment objectives of the customer and that any losses sustained by the customer were market related.
- Defense of broker-dealer in "selling away" case in FINRA arbitration alleging failure to supervise broker who allegedly operated a Ponzi scheme while affiliated with the broker dealer. Defense proceeded on the grounds that the broker-dealer's supervision of the broker was reasonable and that the Plaintiff did not sustain any losses in his investment in the scheme. Defense verdict obtained.
- Motion to dismiss, with prejudice, granted in FINRA arbitration based upon Plaintiff customer's repeated discovery violations. Motion to dismiss upheld in federal district court following petition to vacate arbitration award filed by Plaintiff customer. Motion to dismiss granted in FINRA arbitration based upon FINRA Eligibility Rule.
- Defense verdict obtained in FINRA arbitration on behalf of broker and broker-dealer where the public customer alleged that she was not properly advised regarding the tax implications resulting from a premature withdrawal from a variable annuity in a IRA account.
- Motion to dismiss granted on behalf of title insurance agent in Federal civil RICO case.
- Expungement obtained in FINRA arbitration on behalf of broker in case involving

suitability of non-publicly traded REITs.

- Dismissal on behalf of real estate agent in seller's disclosure case.
- Dismissal on behalf of supervising life insurance general agent in wrongful termination case.
- Motion for judgment on the pleadings granted on behalf of title insurance agent in real estate fraud case.

Results

Summary Judgment Secured for Life Insurance Agent

We obtained summary judgment on behalf of our client, a life insurance agent, who sold a disability policy to the plaintiff. The plaintiff claimed that the policy was misrepresented to him, and that he was led to believe that if he was ever disabled, he could collect full benefits on the sold policy, as well as another supplemental disability policy he owned through another insurance carrier. When the plaintiff became disabled (nearly two decades after purchasing the initial policy), he discovered that the policies would offset each other to avoid over-recovery. He then filed a lawsuit against the insurance agent, as well as the insurance company, and the referral insurance agent was joined as a third-party defendant in the case. The plaintiff's demand was in excess of policy limits, and the defense successfully argued a lack of causation and damages to substantiate his claims that an offset would not apply in this case.

Defense Verdict Secured in FINRA Arbitration Matter

We obtained a defense verdict in a FINRA arbitration where the claimant donated approximately $600,000 to a donor advised fund in 2012 and took a tax deduction. The claimant alleged that the donor advised fund was mismanaged and lost approximately $140,000 in value in 2022. We defended the fund's managers in the case based upon the claimant's lack of standing once the funds were donated. Further, we presented evidence through the respondent's testimony that the account was managed in accordance with the goals and objectives set for the account. In addition, we presented evidence that the account was overall profitable and performed better than the S&P 500 index during the relevant time period.

Secured Defense Verdict In Richmond FINRA Arbitration

Defense award obtained on behalf of our client, a registered investment advisor, in a FINRA arbitration involving alleged mismanagement and lack of transparency concerning a Donor Advised Fund. The arbitration panel denied the claims in their entirety and recommended expungement of the claim from our client's registration records.

Dismissal Affirmed Obtained in a Lawyers' Professional Liability Case

We secured an Appellate Division decision affirming the trial court's order dismissing a fraud and fraudulent concealment case filed against various attorneys and broker dealers. In its decision, the Appellate Division agreed with the trial court's orders and opinions dismissing the case based on entire controversy, collateral estoppel and litigation privilege grounds. In this comprehensive decision, the Appellate Division held that the plaintiff's claims were mirrored claims that had been fully litigated in a prior proceeding, where our clients either represented the litigants in the first case or were directly involved in the first case as defendants.

Secured Defense Verdict in Ohio FINRA Arbitration

We won a defense verdict for a financial advisor in a FINRA arbitration over claims of unauthorized trading and breach of fiduciary duty.

Defense award in a binding FINRA arbitration in Columbus, Ohio on behalf of a financial advisor. The Claimant alleged unauthorized trading and breach of fiduciary duty in connection with individual stock trades. The Claimant further alleged breach of fiduciary duty in relation to the financial advisor's recommendation that the account be changed from a commission based to an advisory fee-based account.

Expungement Award Obtained in FINRA Arbitration

A FINRA arbitration panel recommended the expungement of a customer complaint from a financial advisor's public record. The complaint involved allegedly unsuitable alternative investments and an overconcentration of alternative investments in the customer's portfolio.

Expungement Award Obtained in FINRA Arbitration

A FINRA arbitration panel recommended the expungement of a customer complaint from a financial advisor's public record. The complaint involved an allegedly unsuitable sale of an equity indexed annuity with a nine-year surrender period.

Expungement Award Obtained in FINRA Arbitration

A FINRA arbitration panel recommended the expungement of two separate customer complaints from a financial advisor's public record. Both complaints involved allegedly unsuitable sales of alternative investments.

FINRA Arbitration Panel Grants Motion to Dismiss

A FINRA arbitration panel granted a financial advisor and his supervisor's motion to dismiss a FINRA arbitration on the basis that the Claimant previously brought multiple claims regarding the same securities related dispute against the broker-dealer, who was not a party to this arbitration.

Expungement Award Obtained in FINRA Arbitration

A FINRA arbitration panel recommended the expungement of a customer complaint relating to allegedly unsuitable investments in oil and gas investments that declined during the early months of the COVID-19 pandemic.

Defense Verdict in Binding FINRA Arbitration

Defense award in a binding FINRA arbitration in Boca Raton, Florida on behalf of a broker-dealer. The broker-dealer was sued in arbitration by two retired broker claimants who sought $5 million in past and future benefits, under a retirement program that paid override fees to retired brokers on books of business they had developed decades ago.

Defense Verdict for Registered Investment Advisor and Securities Broker Dealer

Defense verdict after a four-day jury trial in northeastern Pennsylvania on behalf of a registered investment advisor and a securities broker dealer who were sued by their former client for investment losses in alternative investments.

Dismissal on a Directed Verdict in NY FINRA Arbitration

Obtained a dismissal on a directed verdict in a FINRA arbitration in New York. The defense represented a broker-dealer in a dispute with its former customer regarding the unauthorized use of her account information. The claimant was a customer of one of the broker-dealer's New York branches, where her ex-husband also worked as a broker.

Victorious FINRA Arbitration

Obtained a directed verdict on behalf of a broker-dealer and a broker in a FINRA arbitration in New York. The claimant, a sophisticated and wealthy owner of a broker-dealer, alleged that he was being charged an unreasonable mark-up on municipal bond sales. The claimant further alleged that he was the victim of elder abuse.

Thought Leadership

May 10, 2024

DOL's Retirement Security Rule Imposes New Fiduciary Standards on Financial Services, Insurance Industries

August 16, 2023

FINRA Announces Effective Date for New Procedures for Expungement Requests

May 4, 2023

FINRA Proposal Creates Urgency for Brokers Seeking Expungement of Customer Complaints

May 12, 2022

FINRA, the SEC and Congress Aim to Safeguard Senior Investors