



FINRA Expungements: PIABA's Press Release Recalls Mark Twain on Statistics

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PIABA – the securities-investor plaintiff's bar – issued an October 16 press release roundly criticizing industry self-regulatory rules allowing a broker to seek expungement of a customer-claim from her permanent record. PIABA's release relies on blunt statistics showing that about 60% of arbitration awards containing the word "expungement" granted that relief (with a higher 89-96% rate for awards entered on settlements). The group failed to mention, though, recent reforms requiring arbitrators to make an affirmative finding (after a hearing) that:

- The claim was **factually impossible** or **without merit**; or
- The broker **wasn't even involved** in the alleged wrong-doing; or
- The claim or allegations were **false**,

before arbitrators can recommend expungement. *See FINRA R. 2130. See also FINRA Reg. Notice 08-79.* Moreover, those same reforms require a broker seeking expungement to notify FINRA and then take that arbitration award to a Court for review and confirmation. *See FINRA R. 12805, 13805.* Those reforms also required FINRA arbitrators to take and pass extra training specifically devoted to the new expungement rules. PIABA's press release didn't mention that the group was a principal proponent of the 2009 reforms.

For its part, FINRA Dispute Resolution points out that broker records are expunged in less than 5% of its arbitrations.

Because a securities arbitrator can't even recommend expungement without first holding a hearing and finding that the claims were false or the broker wasn't even involved, the real news in the PIABA study is that expungements were *denied* a little less than half the time. The spin on a higher expungement rate in settled cases naturally doesn't mention that those settlements – of course – are agreements requiring the consent of the claimants themselves.

So the next time you see an interest group's press release combining gross "statistical analysis" with hot-button words like "alarming," you might recall Mark Twain's admonition about statistics and ask for more context.

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