

# Securities Arbitration 2020: Deep Dive



**Friday, March 06, 2020**

9:00 a.m. – 4:45 p.m



Convene Conference Center  
810 Seventh Ave. at 53rd St.  
New York, NY

**7.0**

MCLE Credits

4.0 Skills  
2.0 Areas of  
Professional Practice  
1.0 Ethics

# Securities Arbitration 2020: Deep

8:30 – 9:00 a.m.	<b>Registration</b>
9:00 a.m. – 9:10 a.m.	<b>Introduction</b>
9:10 a.m. – 10:00 a.m.	<b>Session #1, Human Nature and Securities Disputes</b> <ul style="list-style-type: none"><li>• How do FINRA's statistics reflect the way in which trust relationships were established and allegedly breached? The kinds of securities and the nature of sales practices.</li><li>• Why do people trust financial advisers and financial institutions?</li><li>• Is FINRA any longer a forum of equity or have the procedural rules of litigation, of the courthouse, taken over the forum of equity?</li><li>• Do you want arbitrators who are litigators to hear your cases? How about arbitrators with no reported Awards?</li><li>• Practitioner demeanor best appreciated by arbitrators.</li><li>• Tips on getting arbitrators to empathize with your clients and engage in the case.</li><li>• Practical distinctions between arbitration and litigation. When should parties prefer litigation?</li><li>• The success of FINRA's Portal and things to come.</li><li>• The new Expungement Rule.</li></ul> <p><i>(1.0 MCLE Credit in Areas of Professional Practice)</i></p>
<b>Moderator:</b>	David E. Robbins, Esq., Kaufmann Gildin & Robbins LLP, New York, NY
<b>Speakers:</b>	Richard W. Berry, Esq., FINRA Dispute Resolution, New York, NY Hon. William A. Hohaus, Nassau County District Court, New York, NY Prof. Seth E. Lipner, Deutsch & Lipner, Garden City, NY C. Evan Stewart, Esq., Cohen & Gresser LLP, New York, NY
10:00 a.m. – 10:50 a.m.:	<b>Session #2, Trust and Beyond in Case Selection, Preparation and Pleading</b> <ul style="list-style-type: none"><li>• While everyone has the right to be defended, not every customer who lost money should bring a securities arbitration. How to determine whether a "case of merit" exists.</li><li>• How respondents should decide which cases to settle early.</li><li>• How to monetize the breach of fiduciary duty in an advisory account case.</li><li>• Pre-pleading investigations for claimant and respondent.</li><li>• Crafting your narrative and themes for claimant and respondent.</li><li>• Drafting effective Statements of Claim and Statements of Answer.</li></ul> <p><i>(1.0 MCLE Credit in Skills)</i></p>
<b>Moderator:</b>	Jonathan L. Hochman, Esq., Schindler Cohen & Hochman LLP, New York, NY
<b>Speakers:</b>	Abigail Elrod, Esq., Morgan Stanley, New York, NY Ross B. Intelisano, Esq., Rich, Intelisano & Katz, LLP, New York, NY
10:50 a.m. – 11:05 a.m.:	<b>Break</b>

11:05 a.m. – 11:55 a.m.:

### **Session #3, Defending the Indefensible?**

- Is every “elder abuse” case a loser for the defense?
- Is the same outcome certain in selling away cases?
- Defending a firm when the broker is bankrupt or incarcerated.
- Defending a case that the customer’s attorney has already “tried” in the Press.
- Defending unlikeable and arrogant Respondents.
- The benefits of Motions to Dismiss even if they are denied.
- Why in-house attorneys refer certain cases to outside counsel and how that can change the optics of a case.
- Defense strategy for cases covered by insurance.

*(1.0 MCLE Credit in Skills)*

#### **Moderator:**

Stephen P. Younger, Esq., Patterson Belknap Webb & Tyler LLP, New York, NY

#### **Speakers:**

Richard A. Roth, Esq., The Roth Law Firm, PLLC, New York, NY  
Ellen Slipp, Esq., Advisor Group, Jersey City, NJ  
Paula D. Shaffner, Esq., Stradley Ronon Stevens & Young, LLP, Philadelphia, PA

11:55 a.m. – 12:45 p.m.:

### **Session #4, Discovery – Making or Breaking a Case**

- Is FINRA’s Discovery Guide sufficient for most cases?
- The need to produce profit and loss analysis sooner than the 20 day production rule before the first hearing – how to obtain them from one’s adversary.
- How Rule 12507 requests should be drafted and pursued for effective results.
- How Motions to Compel can lead to settlement or determine the outcome at a hearing.
- Motions for Sanctions arising out of discovery disputes.

*(1.0 MCLE Credit in Professional Practice)*

#### **Moderator:**

Prof. Paul B. Radvany, Fordham Law School, New York, NY

#### **Speakers:**

Theodore Snyder, Esq., Murphy & McGonigle, New York, NY  
Sam A. Silverstein, Esq., Kaufmann Gildin & Robbins LLP, New York, NY  
Timothy J. O’Connor, Esq., Law Offices of Timothy J. O’Connor, Albany, NY  
Prof. Christine M. Lazaro, Professor of Clinical Legal Education, Director, Securities Arbitration Clinic St. John’s University School of Law, Queens, NY

12:45 p.m. – 1:45 p.m.:

### **Lunch**

1:45 p.m. – 2:35 p.m.:

### **Session #5, Whether, How and When to Settle**

- When to mediate, whom to select, what to expect from your mediator and how best to prepare yourself and your client for mediation.
- Tips on breaking through the roadblocks toward settlement: settling and not winning.
- What should be in settlement agreements.
- Why mediations fail.
- Following up after the first day of mediation.

*(1.0 MCLE Credit in Skills)*

# AGENDA

**Moderator:** James D. Yellen, Esq., Yellen Arbitration & Mediation Services, New York, NY

**Speakers:** Manly Ray, FINRA Dispute Resolution, Boca Raton, FL  
Philip S. Cottone, Esq., Arbitrator and Mediator, Malvern, PA  
Brian J. Neville, Esq., Lax & Neville LLP, New York, NY

2:35 p.m. – 3:25 p.m.:

## **Session #6, Remedies and Damages**

- What are the kinds of compensatory damages that are actually awarded by arbitrators?
- Is the concept of “net-out-of-pocket” damages meaningful any longer?
- Are “well managed” damages pies in the sky?
- How to deal with “hindsight bias” in quantifying damages when mitigation of damages is an issue.
- The perception of a relationship between arbitrators and the amount of damages and their desire to be selected in the future.
- How demonstrative exhibits can assist understanding damages.
- Calculating and presenting pre-Award interest damages.
- When have parties been awarded punitive damages and when should they be sought?

*(1.0 MCLE Credit in Skills)*

**Moderator:** Ross P. Tulman, Trade Investment Analysis Group, Columbus, OH

**Speakers:** Eric H. Siber, Capital Forensics, Inc., Palatine, IL  
Lorena J. Kern, Kern Consulting LLC, New York, NY  
Elizabeth Falk, Falk Financial Analysis, Novato, CA  
Fred N. Knopf, Esq., National Holdings Corporation, New York, NY

3:25 p.m. – 3:40 p.m.:

## **Break**

3:40 p.m. – 4:35 p.m.:

## **Session #7, Trolling and Other Ethical Challenges**

- “Trolling for clients” on the internet – what is effective and what is offensive and are they mutually exclusive?
- Representing multiple parties.
- Ethics in mediation – do they apply?
- When you determine your client has lied or will lie.

*(1.0 MCLE Credit in Ethics)*

**Moderator:** Barry Temkin, Esq., Mound Cotton Wollan & Greengrass, New York, NY

**Speakers:** Andrew Stoltman, Esq., Stoltman Law Offices, Chicago, IL  
Jeff Erez, Esq., Erez Law, Miami, FL  
Timothy P. Burke, Esq., Morgan Lewis & Bockius LLP, Boston, MA & New York, NY  
A. Inge Selden, III, Esq., Bressler Amery & Ross P.C., Birmingham, AL

**Closing Remarks**

## Program Description

Trust established and trust breached. That is at the heart of almost every customer securities arbitration of merit that arbitrators must resolve. With the “forum of equity” being supplanted by the “forum of law,” how do practitioners get arbitrators to look beyond the law to the reality of the relationships between customers and financial advisers? How have FINRA’s cases over the years reflected the different ways in which trust relationships were breached? How has the transition from transactional disputes to fiduciary advisory cases affected the kinds of cases brought? How can attorneys defend elder abuse, affinity fraud cases and other “indefensible” conduct? How can aggressive discovery make or break a case? Ethical issues when customer attorneys solicit potential clients on the Internet and when defense attorneys represent brokerage firms and brokers in the same case?

This year’s program is a “deep dive” into these issues and other issues that are confronting securities arbitration practitioners. When the program’s co-chairs consider the subjects to present, they ask themselves these two questions: Are those the subjects I want to learn about? Are those the speakers I want to hear from on those subjects? This program does a “deep dive” into these questions.

## Who Should Attend

Experienced and novice securities arbitration practitioners should attend. The panelists for this year’s program were chosen because of their unique, extensive and varied experiences in this area of the law. Commercial litigators new to the field will also benefit. The program’s “deep dive” theme is intended to go beyond superficial, everyday issues in arbitration. The breadth of the program and the practical knowledge of the faculty will ensure a memorable and entertaining seminar. You will learn to be an even more effective representative for your client, whether you represent investors, brokers or brokerage firms.

## Program Co-Chairs

David E. Robbins, Esq., Kaufmann Gildin & Robbins LLP, New York, NY

James D. Yellen, Esq., Yellen Arbitration & Mediation Services, New York, NY

## 7.0 MCLE Credits

This course is approved for MCLE credit in New York for all attorneys, including those newly admitted.

**New York:** 7.0 Total Credits: 4.0 Skills, 2.0 Areas of Professional Practice 1.0 Ethics

**California and Pennsylvania:** 5.0 Substantive Law, 1.0 Ethics

**New Jersey:** 7.0 Total Credits: 1.0 Ethics/Professionalism, 0.0 towards certification in civil trial law, criminal trial law, workers compensation law and/or matrimonial law

Uniform Certificates of Attendance can be issued for use in other jurisdictions.

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- **Commercial and Federal Litigation Section**
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#### **Please Note**

- Registrations cancelled less than three days from the program date will be assessed a \$25.00 cancellation fee.