

JAMES D. KEENEY, P.A.
ATTORNEY AT LAW

SUITE 210
100 WALLACE AVENUE
SARASOTA, FLORIDA 34237

TELEPHONE (941) 309-0050
FAX (941) 954-4762

EMPLOYMENT DISCRIMINATION & HARRASSMENT
NASD & NYSE ARBITRATION & LITIGATION
CIVIL TRIALS & APPEALS

www.jamesdkeeney.com

ADMITTED TO PRACTICE BEFORE THE
UNITED STATES SUPREME COURT
MEMBER FLORIDA BAR, NELA, PIABA

jkeeney@post.harvard.edu

May 17, 2005



Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609

Re: Daniel Solin Petition dated May 6, 2005, SEC No. 4-501

Dear Mr. Katz:

I write in support of the subject petition of Daniel Solin, Esq. to require the NASD to make its library of customer arbitration awards public, without restrictions.

I am a Florida lawyer whose practice consists mainly of representing elderly widow retirees whose accounts were mishandled by their stockbrokers. Because the SEC has allowed the securities industry to include a mandatory predispute arbitration agreement in every customer agreement, my clients have no option but to take their claims to NASD arbitration.

The United States Supreme Court, when it approved this practice in *McMahon v. American Express* in 1978, did so believing that customers would be treated fairly in the SRO arbitration proceedings. Unfortunately, this has often not been the case. Instead, biased and poorly trained arbitrators too often decide cases against one customer after another, or purport to give the customer a fair award while actually depriving the customer of essential entitlements such as interest and attorney fees, and then, seemingly as a reward for serving industry interests, get reappointed on a last-minute "cramdown" basis onto future panels.

The NASD pretends that the system is fair, but hides the details of the system from the public. It pretends that its awards are already public, but this is not

actually the case. The NASD restricts the way it permits the public to access and use its awards library. While it purports to make the library public through its joint venture with Securities Arbitration Commentator and Commerce Clearing House (“SAC/CCH”), access to the SAC/CCH “internet portal” is actually restricted by a very onerous “Terms of Use” Agreement that prohibits most legitimate uses. The NASD also licenses its awards library to Lexis, but it does so, again, under onerous restrictions. Even though I subscribe to Lexis, I cannot obtain unrestricted access to all NASD awards such that would enable me to analyze important issues such as which arbitrators have exhibited a consistent statistical bias against customers in cases against large wire houses, or never awarded a decent amount to any customer in a suitability case.

This restrictive licensing scheme is preventing members of the public, like Mr. Solin, from conducting academic and legal research into arbitrators and arbitration awards. Mr. Solin wants not only to conduct research, but also intends to provide a service to arbitration attorneys like myself (for a fee) to assist them in improving their arbitrator selection methodologies. He is prevented from doing that by the NASD’s anticompetitive and unduly secretive policies.

The arbitration awards themselves are not properly the subject of copyright protection. They are like the decisions of courts, which West Publishing Company has long been forced to make available to the public. Lacking any property rights, the NASD and its agents SAC/CCH and Lexis seek to monopolize the library of awards, contrary to law and to the detriment of the public. They use restrictive “Terms of Use” click-through agreements to create pseudo-contracts that wrongly restrict legitimate academic and legal research.

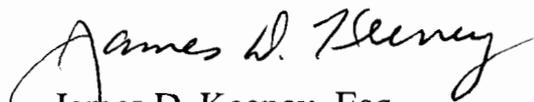
The Securities and Exchange Commission has the power to grant Mr. Solin’s petition. The NASD is a self-regulatory agency that is under the control of the SEC. The SEC, having permitted the securities industry to force its customers into NASD arbitration, should not permit the NASD to restrict public access to the resulting arbitration decisions to any greater extent than the federal courts restrict access to their written decisions.

The SEC should grant Mr. Solin’s Petition.

Jonathan G. Katz
May 17, 2005
Page 3

Thank you for your attention to this comment.

Respectfully,


James D. Keeney, Esq.
James D. Keeney, P.A.