64

KRAMER, SOPKO & LEVENSTEIN, P.A.

ATTORNEYS AT LAW

ROBERT S. KRAMER
JAMES SOPKO
Board Certified Tax Lawyer
Board Certified Wills, Trust
and Estates Lawyer
RICHARD H. LEVENSTEIN
Board Certified Business Litigation Lawyer
KOLLEEN C. BANNON
DAVID STEINFELD

853 S.E. MONTEREY COMMONS BLVD.
STUART, FLORIDA 34996
POST OFFICE BOX 2421
STUART, FLORIDA 34995

(772) 288-0048
FAX (772) 288-0049
BOCA RATON: (561) 394-8886
e-mail RLevenstein@KSSLawyers.com

JOHN K. COPELAND – *OF COUNSEL*

February 1, 2006

To the Honorable Secretary
Jonathan G. Katz
SECURITIES AND EXCHANGE COMMISSION
100 F. Street, N.E.
Washington, D.C. 20549-9393

Re: File No. SR-NASD-2005-094

Dear Secretary Katz:

I am writing concerning Release No. 34-52332, File No. SR-NASD-2005-094, relating to amendments to the classification of arbitrators, pursuant to Rule 1038 of the NASD Code of Arbitration. I have also received a copy of a letter sent to you dated September 19, 2005 by Alan C. Friedberg, Esquire of Pendleton, Freidberg, Wilson & Hennessey, P.C.

My sentiments with regard to the securities arbitration system presently in place and utilized by the NYSE and the NASD are the same as Mr. Friedberg's, and perhaps even stronger with respect to my negative feelings towards that system. I am enclosing a letter I recently forwarded to Karen Kupersmith, the Director of arbitration for the New York Stock Exchange, discussing the experiences I have had with the arbitration system in representing numerous clients before both the NYSE and the NASD arbitration panels.

My sentiments, as expressed in my letter to Ms. Kupersmith have not changed, and allowing an arbitrator from the securities industry to continue to sit on arbitration panels makes a mockery of the system, and in effect takes the impartiality away from the tribunal deciding the case being arbitrated. As stated in my correspondence to Ms. Kupersmith, it would be the equivalent of having police officers sit on juries involving

the trial of criminal cases, or having a juror who was employed by the plaintiff's employer sit on the jury in a case in which another employee was the plaintiff. The jury system has been in existence in this country for over two hundred years, and still works quite well. Continuing the securities industry's arbitration system in the present form deprives claimants of the ability to have a fair and impartial tribunal hear those cases, and gives the security industry the marked and distinct advantage of usually starting out with one vote of the two required to prevail in an arbitration proceeding already cast in their favor. It is time for major changes to be made with regard to the arbitration system, or to simply abolish that system and restore the rights to a trial by jury with regard to securities arbitration matters to investors.

I am available to discuss this matter with you or any member of the Commission, at any time. I cannot emphasize how strongly I feel about this subject matter, and how professionally discouraging and disappointing it is to be forced to try cases in an arena which is not fair and impartial.

Very truly yours,

Richard H. Levenstein

RHL/shb
Enclosure

KRAMER, SOPKO & LEVENSTEIN, P.A.

ATTORNEYS AT LAW

ROBERT S. KRAMER
JAMES SOPKO
Board Certified Tax Lawyer
Board Certified Wills, Trust and Estates Lawyer
RICHARD H. LEVENSTEIN
Board Certified Business Litigation Lawyer
KOLLEEN C. BANNON
DAVID STEINFELD

853 S.E. MONTEREY COMMONS BLVD.
STUART, FLORIDA 34996
POST OFFICE BOX 2421
STUART, FLORIDA 34995

(772) 288-0048
FAX (772) 288-0049
BOCA RATON: (561) 394-8886
e-mail RLevenstein@KSSLawyers.com

JOHN K. COPELAND – *OF COUNSEL*

December 21, 2005

Ms. Karen Kupersmith
Director of Arbitration
New York Stock Exchange, Inc.
20 Broad Street, 5th Floor
New York, NY 10005

Dear Ms. Kupersmith:

It is with great hesitation and trepidation that I write this letter, however I feel absolutely compelled to do so, and in fact, I believe I would be derelict in my duties as an attorney in not doing so. I have been an attorney for twenty nine (29) years, having been licensed in the State of Louisiana in 1976 and the State of Florida in 1977. I am board certified in business litigation by the Florida Bar, presently serve as President of the Martin County Bar Association, and have served on the Florida Bar's Civil Procedure Rules Committee and Rules of Judicial Administration Committee for many years. I have tried dozens of cases before judges and juries, in the State and Federal courts of Florida, and I have arbitrated numerous securities claims of customers against broker/dealers, and have handled final hearings with respect thereto on at least ten (10) separate occasions. Therefore, I am not without experience in the litigation and arbitration field, and feel peculiarly qualified to voice the opinions I am about to raise which follow hereinafter.

I have found the system of arbitration employed by the NYSE and the NASD to be a tribunal which is unfair, prejudiced, and totally skewered in favor of the securities industry and against the claimant. I have had claimants whose enter life savings and assets were lost as a result of broker misconduct, ranging in ages from their 40's to the 80's, and the NYSE panels have awarded nothing to them, despite overwhelming evidence supporting an award, in their favor. I have witnessed securities industry arbitrators and neutral arbitrators clearly biased against claimants, and in favor of the

securities industry, and with no knowledge or appreciation of what an impartial tribunal looks like or operates. I have seen attorneys representing the securities brokers who were respondents in my claims behave and engage in conduct that, in a court of law, would be held contemptuous and would result in their spending time in jail, and about which the panel of arbitrators has done absolutely nothing, despite my repeated requests.

In short, this system is not just broken, but destroyed and should be abolished. How can claimants receive fair treatment, when one of the arbitrators is a representative of the securities industry, of which all respondents are a member? Why is there no corresponding claimant's representative on your panel of arbitrators, so that the playing field is level and the third arbitrator therefore would in fact be a neutral chairman? How is it that the system can exist and be defended as valid when one of three members of the panel comes to the proceeding with a built-in bias, being a representative of the very industry of which the respondent is a member? It would be the equivalent of allowing the employees of parties to lawsuits to sit as jurors in cases in which their employer was involved, or allowing members of law enforcement agencies to sit as jurors in criminal prosecutions, all of which is prohibited by law.

In all of the arbitrations which I have handled, which have gone to final hearing, the panels have awarded zero to the claimant, have given no reasons for the denial of relief to the claimants, are not required to provide any reasons for the decisions made, and therefore give attorneys and parties no insight as to what part or parts of their case were not persuasive, or proven, so that there is no knowledge to be used for the analysis of future cases and issues, as there is when a Court rules and renders an opinion upon which the ruling is based.

If I thought, even for a minute, that there was anything that attorneys who represent claimants in this system could do, would make the system better, and would be accepted constructively by the NYSE and NASD, I would devote my efforts to doing so, independently or through PIABA, of which I am a member. However, I firmly believe that in an arbitration system run by and for the sole benefit of the securities industry, that such efforts are a waste of time, effort and money. Instead, I will devote my time to restoring integrity to these proceedings, by doing everything in my power to require cases between customers and broker/dealers to be litigated in the Courts of our country once again. Judges and juries are bound by the law and not by whim and fancy, and where decisions rendered are required to be based upon sound reasoning and opinions, rather than totally devoid of same. As an attorney licensed to practice law for nearly thirty (30) years, who takes his profession, ethical obligations and responsibilities seriously, it is

difficult for me, as an officer of the court system of my state and nation to continue to participate in a system as openly corrupt, biased, and beyond repair as is the securities industry arbitration system. I am unable to even explain to my clients why a panel of arbitrators has ruled in the way that it has, because they are not required to, and encouraged by the securities industry arbitration system administrators *not to furnish* reasons for their decisions. This cowardly way of making decisions in this system is no better than a kangaroo court, in which the result is known long before the testimony and evidence is submitted.

Very truly yours,

Richard H. Levenstein

RHL/shb