

Cleaning up tainted broker records becomes a cottage industry for one law firm

Doc Kennedy leverages Finra's arbitration system to expunge hundreds of customer complaints

By **Jeff Benjamin** | *January 3, 2019 - 4:24 pm EST*

Critics may take Dochter Kennedy to task for helping brokers clean up their disciplinary records, but no one can argue with his success.

The 39-year-old president and founder of AdvisorLaw, which specializes in removing customer complaints from brokers' online profiles, handles more broker expungement cases than anyone else in the business.

Last year, through Dec. 6, the Denver-based law firm had handled 252 of the 403 broker expungement requests to the Financial Industry Regulatory Authority Inc. The next closest law firm had handled just 26 such requests.

On the homepage of its website, [AdvisorLaw features a pie chart](#) showing an 89% success rate.

"AdvisorLaw is the 800-pound gorilla in this field right now," said Andrew Stoltmann, immediate past president of the Public Investors Arbitration Bar Association, which represents plaintiff's attorneys.

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"What they're doing has really clouded investors' views of what's happening out there," he added. "They have cleaned up hundreds of complaints from brokers' records, and some of those brokers are bad guys."

While Mr. Kennedy is often painted by plaintiff's lawyers and investor advocates as the one wearing the dark hat, he makes no apologies for [capitalizing on the cottage industry](#) that was created by the [regulatory system](#).

"We're handling between a third and half of all the expungement cases," he said. "But, in our due diligence, if we see something that puts the viability of the case at risk we will give you your money back, and tell you to go find another lawyer."

Mr. Kennedy, who founded AdvisorLaw in early 2016, said his success rate is due to a strict adherence to Finra guidelines for having customer complaints expunged from a broker's record.

The basic expungement-qualification criteria require that the claim is false, impossible, or the registered representative was not involved in the alleged investment-related sales practice violation.

Based on that, Mr. Kennedy and his team of three dozen lawyers won't take cases in which the broker was found guilty or admitted guilt, even if only in the form of an apology letter to the customer.

"You have to tell a story, and show the lines of one or more of those criteria," he said. "The arbitrators when ruling on the expungement requests have a blank check. They don't have to explain why they're denying it."

Blank check or not, expungement-request denials are rare, with arbitration panels approving them 93% of the time.

For its part, Finra has acknowledges some [cracks in the system](#) and has worked on making improvements, including a recent [announcement that enhanced guidance for arbitrators](#) that is being sent the Securities and Exchange Commission for approval.

The guidance, which was originally proposed in September 2017, does not address the heated issue of how far back a broker's record can be expunged, but it does remind arbitrators that expungements should be rare exceptions.

"Finra also shares concerns over expungement," said spokeswoman Michelle Ong. "Last year, Finra put forth proposals to clarify when and how expungements are made in the arbitration system. And Finra continues to work with the SEC, state regulators and others regarding expungement matters brought through the courts."

Mr. Kennedy, who realizes his business model is under constant scrutiny from those who are critical of the expungement process, plans to ride the wave for as long as he can.

By his own calculations, about 10% of the industry's 600,000 brokers have at least one disclosure mark on their record.

And of those 60,000 brokers, he said half have multiples marks.

"Everybody is always taking aim at us because nobody advocates for the individual brokers," he said. "The bottom line is, we're not going away."

Mr. Kennedy justifies his taking the side of brokers by explaining that any customer dispute, no matter how unlikely or illogical, becomes a part of a broker's online record.

"A lot of times the investors maybe have a stock-picking club or are talking to somebody about their portfolio and decide to make complaint," he said. "Another thing is maybe dear old dad passes away and one of the kids files a complaint that one of the investments wasn't suitable for the dead dad. I've seen ex-girlfriends call and complain just to get back at somebody."

When it comes to a broker with multiple disclosures, Mr. Kennedy said it is sometimes related to a particular asset, where a bunch of investors might be upset about the performance of their Puerto Rican bonds, or a concentrated time period when the market collapsed.

"Even if the case goes to arbitration and the broker wins and the client has to pay the attorney fees, the disclosure stays on the broker's record," Mr. Kennedy said.

Adam Gana, managing partner at law firm Gana Weinstein, recognizes that brokers can be victims in customer dispute cases, but when he sees more than [90% of expungement requests being approved by Finra arbitration panels](#) he questions the validity of the system, and how some might be taking advantage of it.

"I don't believe that 93% of the customer complaints are false, and that's what it says when 93% of requests are expunged," he said. "I understand that in some circumstances where a complaint could be so frivolous that it should be expunged, but that should be rare. When you have cases where people are making a cottage industry and getting hundreds of awards annually, and hiding claims against brokers, you don't have a system any more that protects investors."

Mr. Gana pins the blame on the system that lets lawyers argue before what he describes as under-qualified arbitration panels that rarely hear from the customers that filed the original complaints.

In a lot of cases, the customers will receive a settlement from a brokerage firm, and then move on, which is something Mr. Gana said leads to a higher percentage of expungements.

"After a settlement, the customer usually doesn't want to be involved anymore," he said. "They would have to go to the hearing at their own expense and get cross examined, which is why they usually don't get involved."

Until a rule change in 2014, as a condition of a settlement, customers were asked to agree to not contest a broker's request to have the record expunged.

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