



Financial Services Employment Arbitration Q&A

How Do I Get a TRO Against a Former Employee If Arbitration in FINRA Is Mandatory?

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Occasionally, you may need emergency relief against a former employee who has absconded with a client list, your confidential information, and the clients themselves. If you are very unlucky, you may need to get a TRO against his new employer as well. If you, the former employee, and the new employer are all required to arbitrate any claims before FINRA, how do you get your TRO?

FINRA Rule 13804

FINRA is well aware that its members and registered representatives may occasionally need emergency relief, and may need limited recourse to the courts to obtain a TRO. FINRA Arbitration Rule 13804 permits parties to obtain a TRO in court in conjunction with filing a statement of claim with FINRA. Under the rule, the parties obtaining a TRO must immediately submit their case to FINRA, which will appoint a panel on an expedited basis for summary adjudication on a preliminary injunction.

Procedure

Under the rule, a party seeking a TRO may obtain one from any court of competent jurisdiction. If the court issues the TRO, the party must immediately submit a statement of claim to the Director of Arbitration of FINRA requesting injunctive relief as well as all other relief sought, and must serve the statement of claim on all other parties at the same time. The rule requires a hearing on the request for injunctive relief to commence within fifteen days, and provides an expedited process for selecting the panel that will hear the request. The process is the same if an arbitration claim has already been filed and the request for injunctive relief is being brought as a counterclaim.

Although the rule does not require it, it is prudent to file your statement of claim simultaneously with the TRO. You can supplement the statement if the court modifies the relief you are seeking. In addition, it is wise to attach the statement of claim to your court pleadings and the court pleadings to your statement of claim so that your adversary cannot argue to either tribunal that you are pulling the wool over its eyes.

Pitfalls

A TRO can be a tricky thing to get, and courts seldom grant all of the relief you are seeking. Bear this in mind as you craft your TRO and argue for it in court - you will need a TRO that remains in place until FINRA can convene a hearing on injunctive relief. Allowing the court to provide a specific expiration date on the TRO is perilous, and numerous factors outside of your control could cause the hearing to be postponed beyond the court's deadline, leaving you without injunctive protection. If possible, you should request that the court order the matter to arbitration, and direct that the TRO will remain in place until the arbitration hearing can occur.

By the same token, if you are on the receiving end of a TRO, be sensitive to the fact that a FINRA hearing on an injunction may not be convened as quickly as you would like. Be prepared to argue in court for a specific expiration date on the TRO, and if the court declines to order one, be prepared to return to court for further relief if the FINRA process takes longer than you anticipated.

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Seyfarth Shaw LLP Financial Services Employment Arbitration Q&A | October 3, 2013

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