

INSIDE METRO BUSINESS

UP CLOSE: EDWARD J. DOVIN

Securities lawyer prefers arbitration to courtroom

By TOM WALKER
twalker@ajc.com

How do you know when investment advice is honestly bad and when it is criminally bad? That's the kind of question Atlanta attorney Edward J. Dovin deals with in the field of arbitration law — a specialty he sees as a legal growth industry. "More and more cases are going the arbitration route because the parties involved, especially in securities and business, want a more streamlined, more cost-effective process," says Dovin, 45, a partner in Dovin Malkin & Ficken LLC.

Many disputes go to arbitration because contracts call for it, especially in the securities and brokerage business. But Dovin says arbitration is increasingly viewed as an attractive alternative to a court trial, where depositions, pretrial motions, scheduling and other factors can stretch out a case by as much as a year.

"Arbitration tends to be a lot quicker," says Dovin. "It's private, with the hearing usually conducted in a hotel conference room. And it is less susceptible to being overturned on appeal. I have never been involved in a case that has been overturned."

As for the initial question about investment advice, this is the kind of securities issue Dovin spends a lot of his time resolving. Given the stock market's recent history, it's easy to understand why securities arbitration is so much more common.

Dovin says securities litigation surged after the stock market collapsed in 2000, bringing the 1990s dot-com boom to an end and resulting in the worst bear market since 1929.

"When you see a tremendous drop in the market, bad advice that otherwise was not noticed when the market is going up comes to the surface when it is on the way down," he says.

More recently, following the market's recovery in late 2002, Dovin's practice has returned to more traditional cases involving such misdeeds as unauthorized trading and giving fraudulent or misleading advice.

A native of Scranton, Pa., Dovin came to Atlanta in 1970 at the age of 10 when his father was transferred by his employer. He went to local public schools and graduated from Wake Forest University in 1982. An MBA degree from Georgia State University led to a law degree from the same school in 1988.

"Law school appealed to me because it was unlike the typical curriculum of a textbook with numerous chapters," Dovin explains. "When you study the law, you study cases by and large. Out of those cases come the various legal theories — the law, if you will — that you apply to new fact patterns and situations. What intrigued me was the fact they were real life situations."

Dovin began his legal career in business litigation but says he was drawn into arbitration "because it was expanding, and I felt I had an aptitude for it."

Q: How does arbitration differ from the traditional courtroom trial?

A: There are a lot of pretrial procedures in a court case to get it ready for trial. You don't have that in arbitration. You have

a simple 20-day pre-hearing exchange.

As for the actual hearing, in court the judge makes procedural decisions and the jury determines the facts. In arbitration, the arbitrator does both. Arbitration tends to be a lot quicker.

Also, in court the [jury usually] doesn't have any expertise in the case, so you have to bring in experts. In arbitration — especially in securities arbitration — one of the three arbitrators is from the securities industry and the other two are trained [in securities]. The people who are deciding the case are knowledgeable about how the case should be handled.

PARTNER, DOVIN MALKIN & FICKEN

Each week, an interview with one of metro Atlanta's intriguing business personalities.

- ▶ **Age:** 45
- ▶ **Residences:** Atlanta
- ▶ **Family:** Wife, Barbara
- ▶ **Hobbies:** Golf and running
- ▶ **Favorite books:** "The Millionaire Next Door" and "Into Thin Air"
- ▶ **Dream job:** "With the formation of our new law firm in November 2005, I feel like I have it."



LOUIE FAVORITE / Staff

Q: How do you tell the difference between inappropriate investment advice and advice that is consciously bad?

A: We've had cases showing both sides of this issue. One case involved a broker who put on a bunch of seminars in the late 1990s to attract clients. Those who attended, he said he would invest their money in a certain Dow strategy. But he didn't. He invested it in his own formulation, which ultimately caused them to [lose money]. That was a fraud case as we saw it, since he promised one strategy and used another. He was not doing what he indicated he would do.

There are cases where unsophisticated people come in for money from retirement, inheritance or something else, and go to a professional who invests it too aggressively. Is this intentional, or misleading? No. But just like a physician has medical practice standards, so do brokers. They are supposed to recommend investments based on a client's needs, background and objectives, and if they don't do this, they can be liable just as much as a broker who deliberately misleads the client.

Many investors don't understand that in ordinary brokerage accounts, you have to approve each transaction in advance. If you don't, and the broker buys and sells anyway, that's an unauthorized transaction. We see quite a few of those situations.

We typically see bad-product cases, too. That's where a product that is suitable for a narrow band of investors may be marketed as though it's a vast, investor-type product suitable for everybody. The variable annuity is an example.

Q: What are the biggest mistakes individual investors make that get them in trouble?

A: First and foremost, the most dangerous situation is the referral. Someone is looking for a broker and goes to someone else who he thinks knows who can help. The problem is when, after they get a referral, it stops there. The person looking for help doesn't do the necessary due diligence. That broker is assumed to be qualified.

The first rule is that, if you are going to someone on a referral basis, that should be the start of the process of doing homework on that brokerage firm to see if in fact it is appropriate. You can get a lot of information about brokers through the Georgia secretary of state's office.

The second mistake is when investors don't adequately explain to their brokers what they are trying to achieve, and seek feedback from the broker on ways to achieve it. Often the investor assumes the broker will take account of all the different possibilities. This needs to be more open to discussion.

And once a relationship is in place, hopefully there is an adequate exchange, a monitoring process. You need to pay attention to what's happening in the account. There again, some people are better equipped to do that than others.

Q: How do abuses manage to occur in the securities business?

A: Brokerage firms have a responsibility to supervise the individuals out there who are interfacing with the public, to make sure their accounts are monitored and that what is occurring is appropriate. Most of the cases we get are situations where, if the supervisory function had been performed, there would have been no losses, or the losses would be smaller.

In boom times like the late '90s, when money is being made hand over fist, lots of times supervisory procedures don't get followed because everybody is making money. Anytime you are in a situation where that kind of money is involved, there is the opportunity for inappropriate action.

Q: Who benefits the most from arbitration?

A: I have found that arbitration is a benefit to the person who has been wronged. It is fair, and I have found it to be beneficial because the parties do not have to go through all the delays associated with a court proceedings. They will get compensated more quickly.

Statistics have indicated that investors win 60 percent of the time, and when the investors win, they win back about 60 percent of what they lost.