



## The Impact of ZOOM on FINRA Arbitration Hearings

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### Introduction

Virtually all disputes between securities brokerage firms and their customers are subject to mandatory arbitration conducted through FINRA. Until recently, the ultimate merits of investors' claims were typically aired and evaluated at hearings held, in-person, before three arbitrators. As COVID-19 evolved into a public health crisis in the US, FINRA postponed all in-person hearings starting in mid-March 2020, repeatedly extending the postponements now up through at least April 2021.<sup>1</sup> Faced with indefinite delays, many Claimants have opted to proceed with remote hearings conducted through the ZOOM technology platform.

ZOOM hearings present challenges - with obvious costs and benefits compared to in-person hearings - for Claimants, Respondents and Arbitrators. For example, all parties benefit from eliminating travel costs incurred for in-person hearings. ZOOM may make it more difficult for Claimants to carry their burden of proof at a contested hearing or to present the full personal impact of the alleged financial misconduct.

This study uses FINRA arbitration awards downloaded on January 6, 2021 to assess the impact of ZOOM on Claimants. With at least four more months of ZOOM hearings to come, additional data will be developed. However, we now have enough experience to conclude that the remote hearings mandated by FINRA are a tremendous disservice to investors. We find that investor Claimants are far less likely to win and, on average, they recover substantially less of their requested compensatory damages when they do prevail at ZOOM final hearings than at in-person final hearings. In addition, we find hearings for investor Claimants have been delayed while Broker Claimants seeking expungement of disciplinary marks continued unabated and their expungement efforts are even more successful during the ZOOM era than previously.<sup>2</sup>

#### *1. Investors Win Much Less Often in ZOOM Hearings than in In-person Hearings.*

FINRA publishes statistics on the results of Investor claims which show Investors received some monetary award in 34% of cases decided after a hearing in 2020 compared to 45% in 2015, 2017 and 2019 and 42% in 2016 and 2018.<sup>3</sup> This is a decline of approximately 10 percentage points or, stated differently a 22% reduction in Investor wins compared to the 2015-2019 average. The 22% decline in percent of cases Investors won in 2020 compared to the preceding five years does not capture the full impact of the ZOOM technology since FINRA includes awards published during the first four months of 2020 which resulted from in-person hearings.

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<sup>1</sup> See [www.finra.org/compliance-tools/weekly-archive/03182020#upcoming](http://www.finra.org/compliance-tools/weekly-archive/03182020#upcoming). As of January 15, 2021, all in-person arbitration proceedings scheduled through April 2, 2021 are postponed.

<sup>2</sup> We treat arbitration awards with publication dates after May 1, 2020 as resulting from ZOOM hearings unless the award identifies a final hearing occurring before March 15, 2020. We exclude arbitrations decided on the pleadings.

<sup>3</sup> See [www.finra.org/arbitration-mediation/dispute-resolution-statistics](http://www.finra.org/arbitration-mediation/dispute-resolution-statistics), accessed January 20, 2021.

In Table 1, we report the percent of published awards decided after a hearing won by Investors for the full year and for the first four months and last eight months of each year from 2015 through 2020.<sup>4</sup> Investors prevailed in 43.7% of the awards published from May 1 to December 31 in the five years from 2015 through 2019 with little year-to-year variation. Investors prevailed in only 28.8% of the published awards during these same eight months in 2020 when the hearings were conducted remotely. This is a 14.9 percentage points or 34% decline in the rate at which Investors prevail in FINRA arbitrations coinciding with the transition from in-person hearings to remote hearings.

**Table 1** Investors Wins Decline During the ZOOM-era.

Year	Awards	Investor	% Won	Awards	Investor	% Won	Awards	Investor	% Won
		Wins			Wins			Win	
Full Year			January to April			May to December			
2015	300	137	45.7%	106	43	40.6%	194	94	48.5%
2016	264	111	42.0%	99	46	46.5%	165	65	39.4%
2017	251	103	41.0%	84	35	41.7%	167	68	40.7%
2018	259	107	41.3%	91	34	37.4%	168	73	43.5%
2019	232	102	44.0%	93	38	40.9%	139	64	46.0%
2020	118	37	31.4%	59	20	33.9%	59	17	<b>28.8%</b>

2. *Investors Recover Less in ZOOM Hearings than in In-person Hearings When They Win.*

Even in cases in which Investors win decided after a ZOOM hearing, they appear to suffer compared to their likely experience with in-person hearings. Table 2 reports the average ratio of awarded amount to requested amount in awards in which the Investor prevailed after a hearing for the same time periods in Table 1.

**Table 2** Percent Recovered When Investors Win Declines During the ZOOM-era.

Year	Awards	Median	Median	Average %	Awards	Median	Median	Average %	Awards	Median	Median	Average %
		Requested Amount	Awarded Amount			Requested Amount	Awarded Amount			Requested Amount	Awarded Amount	
Full Year				January to April				May to December				
2015	129	\$504,770	\$201,000	54.1%	41	\$547,391	\$280,300	56.1%	88	\$490,541	\$173,013	53.2%
2016	102	\$388,929	\$158,483	58.0%	43	\$426,025	\$151,373	51.5%	59	\$325,850	\$181,757	65.2%
2017	95	\$440,158	\$200,300	73.1%	34	\$353,785	\$226,400	58.0%	61	\$454,094	\$200,000	79.4%
2018	101	\$400,000	\$181,931	64.5%	32	\$815,579	\$251,628	52.5%	69	\$345,800	\$150,410	69.7%
2019	97	\$512,256	\$226,356	58.4%	36	\$454,500	\$205,076	57.0%	61	\$550,000	\$226,356	57.3%
2020	36	\$720,706	\$151,337	44.7%	20	\$720,706	\$172,850	51.3%	16	\$715,252	\$105,671	<b>33.3%</b>

The amount recovered after remote hearings, reflected on awards published starting in May 2020, is significantly lower than the amounts recovered previously. Not only has the remote technology coincided with a 34% decline in the frequency of Investor wins but Investors also recover only 33.3% of their requested damages when they do win in the ZOOM era. This is 31.7 percentage points - 49% less - than the 65% average percent of requested amount recovered in 2015-2019.

<sup>4</sup> There were two awards published after May 1, 2020 which resulted from in-person hearings held prior to March 15, 2020.

3. *There is Marked Geographic Variation in the Decline of Investor Win Rate.*

Table 1 and Table 2 reflect the substantially worse Investor experience with ZOOM hearings. We find an interesting regional pattern within that national collapse. In Table 3 we report the award results for 2019 and 2020 between before and after the ZOOM-era across the four geographic regions employed by FINRA plus the New York city Region.<sup>5</sup>

**Table 3** Investor Experience, In-person and via ZOOM, Varies by Geographic Region.

Year	Awards	Investor Wins	% Won	% Recovered in Wins	Awards	Investor Wins	% Won	% Recovered in Wins
Northeast	76	32	42.1%	50.7%	6	0	0.0%	n/a
New York City	46	19	41.3%	42.4%	5	0	0.0%	n/a
Southeast	87	45	51.7%	55.1%	21	6	28.6%	11.2%
Midwest	68	30	44.1%	62.9%	15	6	40.0%	27.3%
Western	60	15	25.0%	54.4%	17	5	29.4%	46.0%

All regions except the Western region experience a reduction in both the percentage of Investor awards and the total amount awarded as a percentage of total requested dollar amount in cases in which the Investor wins. The New York City area, defined as hearing sites in New York, NY, Newark, NJ and Jersey City, NJ, also sees a large decrease in award and granted dollar amount percentages. The five awards in New York City in the Zoom era are included in the six awards for the Northeast. While a small sample, it is remarkable that Investors lost all six cases.

4. *Investor are Settling on Less Favorable Terms in the ZOOM-era Than Previously.*

We report summary statistics from Investor case settlements reported in the last eight months of each year from 2015 to 2020 from individual brokers' BrokerCheck reports in Table 4.<sup>6</sup> Unlike the decided cases, the number of arbitrations settled in the ZOOM-era is roughly the same as that for the same eight-month periods in previous five years. The settlement dollar amounts, however, are lower and the ratio of settlement amount to requested amount is generally lower in the Zoom-era than previously. It appears that the dismal results from ZOOM hearings compared to in-person hearings is showing up in lower settlement values.

**Table 4** Settlement Values Drop the During the Zoom-era.

May to December	Settlements	Amount			% of Requested Amount		
		1st quartile	Median	3rd quartile	1st quartile	Median	3rd quartile
2015	741	\$30,000	\$76,500	\$170,000	15.8%	28.6%	46.2%
2016	986	\$34,000	\$75,000	\$160,000	17.5%	29.8%	45.0%
2017	1,002	\$35,000	\$80,960	\$175,000	17.9%	32.8%	50.0%
2018	936	\$37,500	\$83,625	\$205,000	18.9%	32.0%	49.5%
2019	1,010	\$37,625	\$78,750	\$175,131	17.3%	30.0%	47.3%
2020	973	\$30,000	\$75,000	\$170,000	17.2%	26.7%	42.0%

<sup>5</sup> <https://www.finra.org/arbitration-mediation/dispute-resolution-regional-offices-and-hearing-locations>

<sup>6</sup> Any settlement reported in a broker's BrokerCheck report with a status date between 2019 and 2020 is included in this study. Note that this will not include the settlements expunged from brokers' BrokerCheck reports. The BrokerCheck dataset was downloaded on January 6, 2020.

5. *While Investor Claimants Suffer Under ZOOM, Broker Claimants are Having Even More Success with Expungement Requests.*

Table 5 reports summary statistics for arbitration cases involving an expungement request decided in 2015-2020.<sup>7</sup> In contrast with Investor arbitration awards, the number of expungement decisions during the ZOOM-era is similar to the same eight-month periods in previous years and the percentage of requests granted is higher, continuing the trend over the past 6 years.

**Table 5** Expungement Requests Continue Unabated and are Increasingly Successful.

Year	Expungement Requests			Expungement Requests			Expungement Requests		
	Requested	Granted	% Granted	Requested	Granted	% Granted	Requested	Granted	% Granted
	Full Year			January to April			May to December		
2015	533	340	63.8%	180	115	63.9%	353	225	63.7%
2016	470	315	67.0%	150	97	64.7%	320	218	68.1%
2017	604	435	72.0%	162	111	68.5%	442	324	73.3%
2018	801	638	79.7%	233	187	80.3%	568	451	79.4%
2019	959	768	80.1%	319	258	80.9%	640	510	79.7%
2020	803	674	83.9%	259	211	81.5%	544	463	85.1%

**Conclusion**

We present analyses of the devastating impact on Investor Claimants of the transition of all FINRA arbitrations from in-person hearings to the ZOOM technology platform. Investors prevail 34% less often and when they do prevail recover 49% less of their requested damages.

- In the pre-ZOOM-era, Investors won 43.7% of the time and recovered 65% of their requested amount when they won. This implies a 28.4 cents per dollar average recovery in cases decided after a hearing in the pre-Zoom-era.
- In the ZOOM-era, investors win only 28.8% of the time and recover only 33.3% of their requested amount when they won. This implies a 9.6 cents average recovery in cases decided after a hearing in the ZOOM-era.
- This a 66% drop from 28.4 cents to 9.6 cents in expected recovery of going to a hearing compared to before the ZOOM era is not because the underlying events took place during COVID and arbitrators are particularly amenable to the ubiquitous “once in a millennium” defense – the events underlying the cases decided in 2020 took place years earlier.
- The result is also not because of a concentration of a series of particular product cases during the ZOOM-era.

It is apparent that the ZOOM technology is not giving Investors a level playing field on which to present the merits of their cases.

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<sup>7</sup> An expungement request can occur in either customer claimant or non-customer claimant arbitrations. A broker can submit request for expungement of record of the customer complaint to the same arbitration panel following settlement or withdrawal of the customer case, or they can sue the brokerage firm and/or the customer to request expungement in a separate case.