

FINRA Dispute Resolution Arbitrator Training

Explained Decisions

March 2010



Explained Decisions Overview



- In this training, you will learn about FINRA's explained decision rules. Specifically, you will be able to answer the following questions:
 - ✓ What is an explained decision?
 - ✓ Who drafts this decision?
 - ✓ When is an explained decision not required?

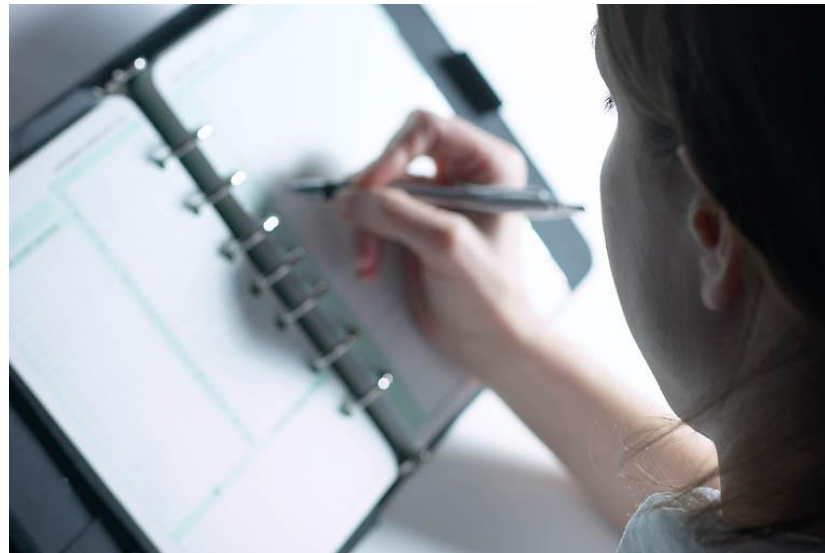
Background



- In 2009, FINRA amended Rules 12214, 12514 and 12904 of the Code of Arbitration Procedure for Customer Disputes (Customer Code) and Rules 13214, 13514 and 13904 of the Code of Arbitration Procedure for Industry Disputes (Industry Code) to require arbitrators to provide an explained decision at the parties' joint request. If the parties jointly make a timely request, the arbitrators **must** provide an explained decision.

Effective Date

- The amendments became effective on **April 13, 2009**, and apply to all arbitration cases in which an initial prehearing conference had not been held, or waived by the parties, by the effective date. Parties must still submit a joint request for an explained decision to require arbitrators to provide one.

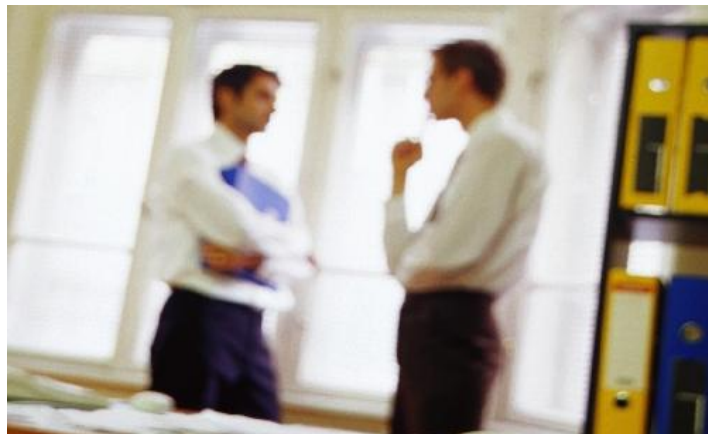


What Is An Explained Decision?

- **Explained decisions are fact-based awards stating the general reasons for the arbitrators' decision.**
- FINRA believes that requiring only concise fact-based reasons in explained decisions, rather than an elaborate opinion, will reduce the potential for misstatements in an award. This will decrease the possibility of subsequent vacatur, modification or remand of an award by a court, and ensure the continued finality of a FINRA award.



What Is An Explained Decision? (Cont'd)



- Requiring only fact-based reasons in explained decisions gives arbitrators the flexibility they need to tailor each award to the specific case being decided.

What Is An Explained Decision (Cont'd)

- Arbitrators do not need to cite legal authorities and/or damage calculations in explained decisions.
- Explained decisions will have no precedential value in other arbitration cases; therefore, arbitrators are not required to follow any findings or determinations set forth in prior explained decisions.



How Do Parties Request Explained Decisions?

- Parties must submit any joint request for an explained decision no later than 20 days prior to the first scheduled hearing date in order to require arbitrators to provide an explained decision.



How Do Parties Request Explained Decisions? (Cont'd)

- If the parties submit their joint request after the 20-day deadline, arbitrators are not required to provide an explained decision. They may treat the request like a motion and make a ruling on whether to provide an explained decision. If the panel decides to grant the request, the chairperson will not be paid an honorarium for providing an explained decision.
- If a party submits an opposed request for an explained decision, the arbitrators should evaluate the request and all responses like a motion and make a ruling. If the panel grants the request to provide an explained decision, the chairperson will not receive an honorarium.

Partial Explained Decisions



- The parties may request that an explained decision address only certain claims.

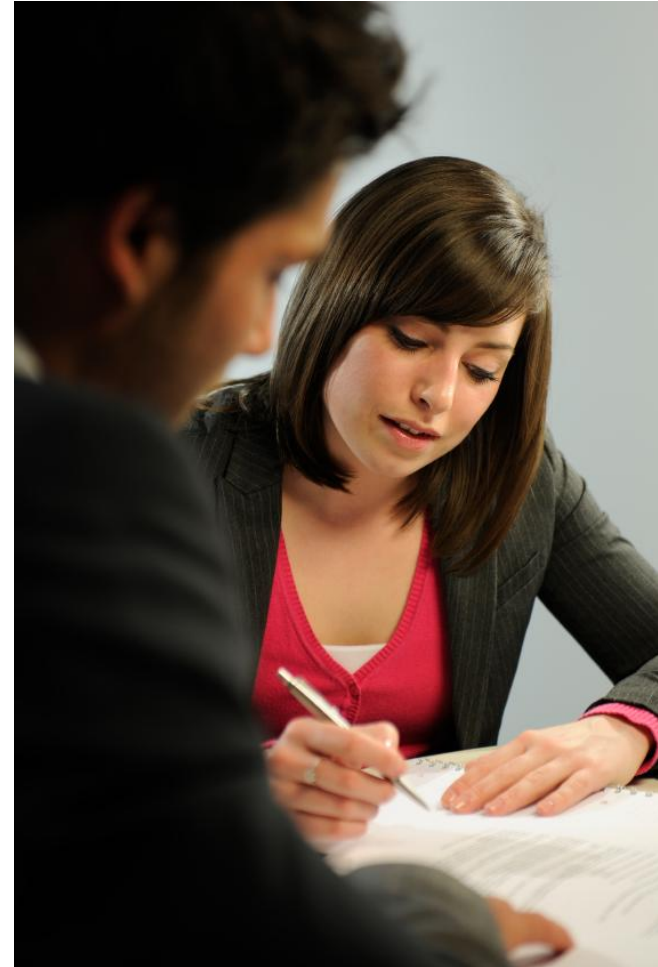
Who Drafts the Explained Decision?

- The chairperson of the arbitration panel will write the explained decision.
- Once the chairperson drafts the decision, the other arbitrators will participate in completing the decision as provided in Rules 12904(a) and 13904(a).
- The chairperson will receive an additional honorarium of \$400 for writing an explained decision. The other panelists will not be paid an additional honorarium.



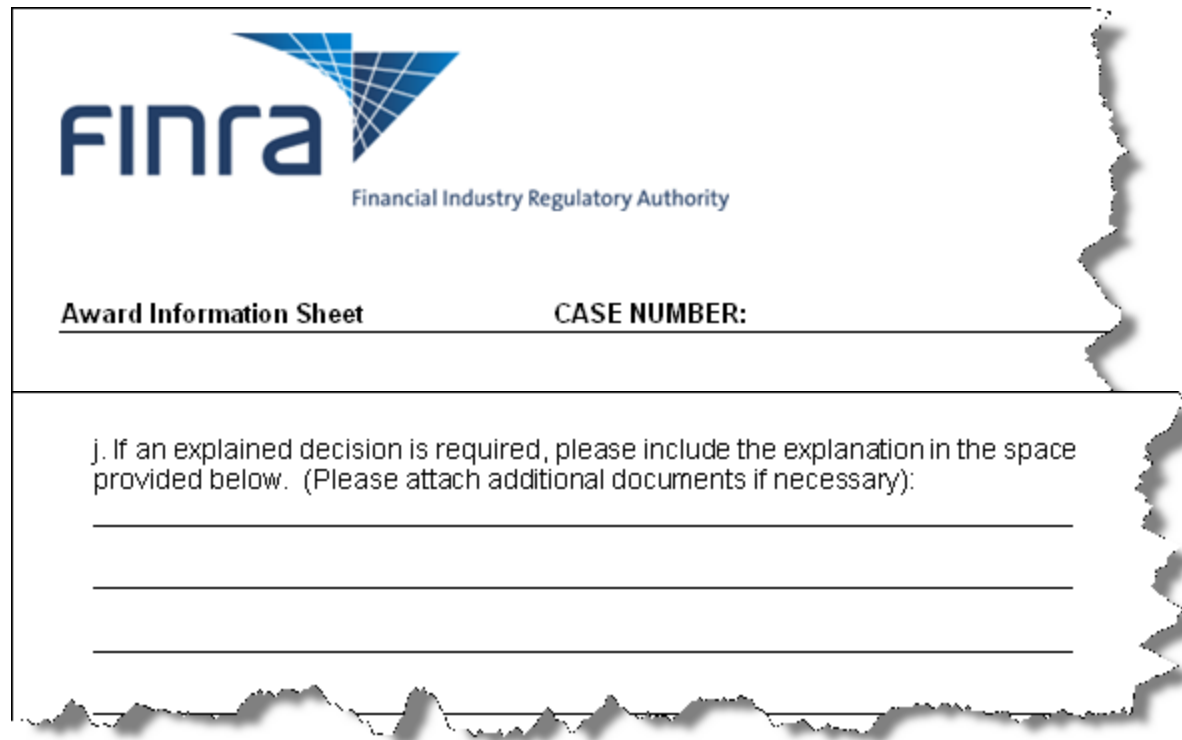
Who Drafts the Explained Decision? (Cont'd)

- All awards must be in writing and signed by a majority of the arbitrators or as required by applicable law.
- As with all other awards, arbitrators will continue to be permitted to concur, concur in part, dissent or dissent in part.



Award Information Sheet

- FINRA updated the “Award” section of the Award Information Sheet to include an explained decision, if required.

The image shows a sample of the FINRA Award Information Sheet. It features the FINRA logo at the top left, which consists of the word "FINRA" in a bold, sans-serif font and a blue stylized triangle to its right. Below the logo is the text "Financial Industry Regulatory Authority". The form is divided into two main sections by a horizontal line. The top section is labeled "Award Information Sheet" on the left and "CASE NUMBER:" on the right, with a horizontal line for the case number. The bottom section contains the instruction "j. If an explained decision is required, please include the explanation in the space provided below. (Please attach additional documents if necessary):" followed by three horizontal lines for the explanation. The entire form is presented with a torn paper effect on its right and bottom edges.

FINRA
Financial Industry Regulatory Authority

Award Information Sheet **CASE NUMBER:**

j. If an explained decision is required, please include the explanation in the space provided below. (Please attach additional documents if necessary):

Award

- Awards with an explained decision will include the following language:

AWARD

If the arbitrators have provided an explanation of their decision in this award, the explanation is for the information of the parties only and is not precedential in nature.

Example of an Explained Decision

FINRA Dispute Resolution
Arbitration No. 0900000
Award Page 7 of 19

AWARD

After considering the pleadings, testimony and evidence presented at the hearing and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for and shall pay to Claimants compensatory damages in the amount of \$50,000 plus interest at the rate of 12% per annum from January 1, 2008 until March 1, 2009.
2. Respondent is liable for and shall pay to Claimants costs in the amount of \$5,000 including forum fees and expert witness fees.
3. Any and all relief not specifically addressed herein is denied.

EXPLAINED DECISION

The Panel finds that fraud was committed by Respondent based on (1) serving his own, rather than his client's interests by way of extreme and repeated instances of "churning" for the purpose of generating excessive commissions while acting in a fiduciary capacity; (2) knowingly taking advantage of his elderly client to deceive his client regarding account activity and to generate grossly excessive commissions while depleting his client's funds; and (3) directly appropriating client funds through forgery.

If the arbitrators have provided an explanation of their decision in this award, the explanation is for the information of the parties only and is not precedential in nature.

Explained Decision Honorarium Allocation

- The panel may allocate the cost of the chairperson honorarium to one party, or may allocate it between or among all parties.
- This update is included in the Award Information Sheet below:

14. Explained Decision Fees

The Explained Decision Rule provides that the panel will allocate the cost of the additional \$400 honorarium to the parties as part of the final award. Please indicate how this additional honorarium should be assessed:

Claimant #1 is assessed _____

Claimant #2 is assessed _____

Respondent #1 is assessed _____

Respondent #2 is assessed _____

When is an Explained Decision Not Required?

- Parties will **not** be able to require explained decisions in two types of cases:
 1. **Simplified arbitrations**: these disputes involve \$25,000 or less and are resolved without a hearing. Simplified cases are governed by Rules 12800 and 13800.
 2. **Default proceedings**: the selected single arbitrator resolves these cases, in which a respondent fails to file an answer, on the papers submitted by the parties absent a hearing. Default proceedings are governed by Rules 12801 and 13801.

- Explained decisions are not appropriate in either of these situations because of the abbreviated nature of the proceedings.

Additional Information

- FINRA did *not* amend Rules 12904(f) and 13904(f), which provide that an award *may* contain an underlying rationale.
- Arbitrators will continue to be permitted to decide, on their own, to write an explained decision.
- If the panel or a member of the panel decides to write an explained decision in the absence of a joint request by the parties, FINRA will not pay an additional honorarium to any panel member.



Available Resources for Explained Decisions

- Links to the information referenced in the training are posted next to the link for this training module. The following is a summary of the links provided:

- [Copy of this presentation](#)
- [SEC Approval Order](#)
- [Award Information Sheet](#)
- [Regulatory Notice 09-16](#)
- [Codes of Arbitration Procedure](#)

Conclusion

- In this training, you learned about FINRA's explained decision rules and how they affect your role as an arbitrator.
- To receive credit for this training and to have it included on your Arbitrator Disclosure Report, please review the practice questions on the following screens. When you have completed your review, please confirm completion by sending an email to: ArbitratorTraining@finra.org.
- Thank you for participating in this training.



Practice Questions

■ Question 1:

Arbitrators must cite legal authorities and damage calculations in their explained decisions.

True or False

Practice Questions

■ Answer:

False.

Explained decisions are fact-based awards stating the general reasons for the arbitrators' decisions. They do not need to include legal authorities and/or damage calculations. FINRA believes that requiring only fact-based reasons in explained decisions will reduce the potential for misstatements in an award and ensure the continued finality of a FINRA award.

Practice Questions

■ Question 2:

Explained decisions do not have precedential value in other cases.

True or False

Practice Questions

■ Answer

True.

FINRA intends that, as with current arbitration awards, explained decisions will have no precedential value in other arbitration cases. Therefore arbitrators will not be required to follow any findings or determinations set forth in prior explained decisions.

Practice Questions

■ Question 3:

Parties may file a joint request for an explained decision at any time before the first scheduled hearing date, requiring the arbitrators to provide an explained decision.

True or False

Practice Questions

■ Answer:

False.

Under the Code, parties must submit any joint request for an explained decision no later than 20 days prior to the first scheduled hearing date in order to require the arbitrators to provide an explained decision.

Practice Questions

■ Question 4:

The chairperson of the arbitration panel will write the explained decision.

True or False

Practice Questions

■ Answer:

True.

The chairperson will draft the explained award on behalf of the arbitration panel and will be paid an additional honorarium for doing so. Once the decision is drafted, the other arbitrators will participate in completing the decision. All awards must be in writing and signed by a majority of the arbitrators or as required by applicable law. As with all other awards, arbitrators will continue to be permitted to concur, concur in part, dissent or dissent in part.

Practice Questions

■ Question 5:

Arbitrators may continue to provide an underlying rationale for an award even in the absence of the parties' joint request.

True or False

Practice Questions

■ Answer:

True.

Arbitrators will continue to be permitted to decide on their own, to write an explained decision. FINRA did not amend Rules 12904(f) and 13904(f), which provide that an award may contain an underlying rationale. However, if the panel or a member of the panel decides to write an explained decision in absence of a timely, joint request, FINRA will not pay an additional honorarium to any panel member.

Reminder

- To receive credit for this training and to have it included on your Arbitrator Disclosure Report, please review the practice questions that appeared on the previous screens. When you have completed your review, please confirm completion by sending an email to **ArbitratorTraining@finra.org**.