



## Client complaints: 'I've seen things get bad'

By James Thorne

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Client complaints happen. As an advisor, receiving one is never pleasant but poor handling can turn a sticky situation into a bad one.

While circumstances vary, there are a few mistakes that advisors routinely make, whether dealing with a potentially problematic client or faced with an active grievance. For the best outcome, securities lawyers offer advice on navigating disputes as well as common pitfalls to avoid.

### **DON'T IGNORE UNHAPPY CLIENTS**

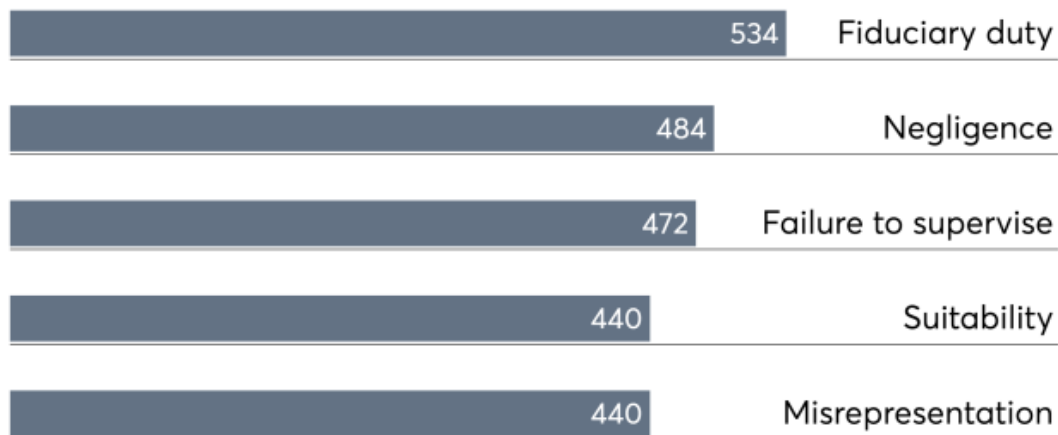
Oftentimes, the clients who pose problems have been troublesome in the past. "The issue I always get is, 'I knew it was going to be that guy,'" says Ross Intelisano, a partner at Rich, Intelisano and Katz. Clients who are problematic in a bull market can become much more of an issue when the market turns.

That's why Intelisano recommends taking a hard look at your book, and considering whether it is worth keeping clients who might cause future

headaches.

## The most common client complaints

These five claims have surfaced the most so far in 2017.



Source: FINRA, claims filed through April 2017

Acknowledging and resolving concerns early can be a way to sidestep formal complaints. "It's when brokers are avoiding customers that I've seen things get bad," Intelisano says.

Documenting your communications is the best defense against accusations of impropriety. So take notes. For the most part these can be general, but more detailed records are needed when dealing with trades that might be on the aggressive end of a client's risk tolerance, says Nikolas Komyati, a principal at Bressler, Amery and Ross. "Those are the types of things where you'd want to get a little bit more granular," he says.

Depending on the details, it may even be necessary to ask the client to recode their account as more aggressive. If they are unwilling to do so, don't execute the trade.

Whenever communications with clients involve a conflict, record it and follow up to resolve the issue. Taking advantage of software solutions to document these interactions will save time and ensure that your notes can be produced when needed.

### **PUT RESOURCES TO WORK**

Once a complaint has been formally lodged, “get a supervisor involved,” Komyati says. “If the supervisor isn’t involved early on, then there will be problems down the road.” At this point, your communication with the client will likely be severed, so the focus should be on defending your position.

Establishing a good rapport with your own firm is critical for a positive outcome. This leads to another key point: “Don’t lie to compliance,” mediator Dana Pescosolido says. “If you cooperate and be honest, it pays off in the long run,” he adds.

That said, “a big mistake that brokers make is presuming that the firm’s interest and their interest are always the same,” Intelisano says. He recommends that you find your own experienced outside counsel early in the process and seek advice throughout.

### **CLEAN UP AND MOVE ON**

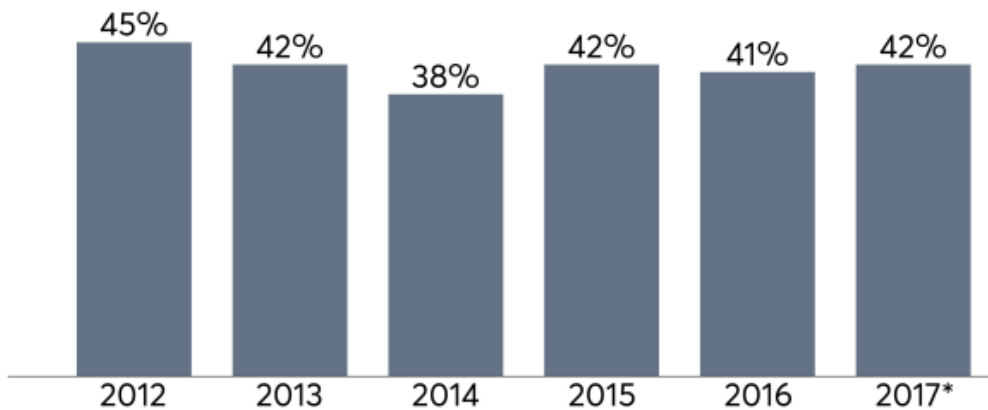
In the wake of arbitration, advisors often end up with a black mark. “Sometimes there’s no wrongdoing, but it’s still on your record,” Intelisano says.

Advisors have the opportunity to tell their side of the story on the Form U4, which will be seen by clients and prospects on BrokerCheck, as well as future employers.

In defending yourself, experts caution to stick to the facts, keep the language professional and never attack the former client. Komyati occasionally sees responses that are overly wordy or aggressive. "I would advise against that," he says.

## Clients usually lose in arbitration

They're awarded damages in only about 40% of FINRA cases that reach a decision.



Source: FINRA; \*stats through July

Expungement is another avenue that could be worth pursuing depending on the nature of the case. Although viewed by FINRA and the SEC as an "extraordinary remedy," expungements are reasonably common. According to a study by PIABA, brokers seeking expungement in cases that resulted in settlements were successful in 88% of cases.

[New rules currently under consideration](#) by FINRA could make the process more difficult for brokers.

Pescosolido recommends searching past expungement cases to find legal representation with a history of success. While the sticker price of pursuing

expungement can reach tens of thousands of dollars, the reward often more than justifies the cost.

"The most valuable thing is a clean record, so don't cheap out," Pescosolido says.

While nobody wants to admit their own shortcomings, facing a formal client complaint can be a catalyst to learning and improving your practice. Ask yourself what you might have done differently and take steps to ensure that you do not find yourself in the position again. In the best of circumstances, you can come away with a clean record and a renewed focus on client service.



## James Thorne

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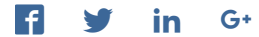
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