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### **NASAA: Court Decision a Major Victory for Investors**

WASHINGTON, D.C. July 21, 2008—The North American Securities Administrators Association (NASAA) today hailed as a major victory for investors a federal appellate court decision involving a stockbroker's attempt to remove customer complaint information from his state-owned disciplinary record.

In its July 15 decision in *Karsner v. Lothian*, the U.S. Court of Appeals for the District of Columbia, in an appeal brought by Maryland Attorney General Douglas Gansler, reversed the lower court and held that the State of Maryland had a right to intervene in a stockbroker's attempt to have a customer's complaint against him purged from his record. In that case, an arbitration panel had recommended – pursuant to a settlement agreement – that the investor's complaint and the ensuing arbitration be expunged, or removed, from the disciplinary record of the broker, who was licensed in Maryland. The appellate court held that the state had a right to intervene in the court confirmation proceeding and to resist the broker's attempt to purge his record.

The ultimate issue is when, and under what circumstances, customer complaint information may be expunged from the Central Registration Depository (CRD), a centralized system used by states and other regulators to process applications for securities industry licenses. NASAA maintains and administers the CRD database pursuant to an agreement with FINRA, the securities industry's self-regulatory organization.

“State securities regulators are pleased that the Court of Appeals has upheld that the State of Maryland has the opportunity to protect the integrity of its public records from being weakened by brokers seeking to create the impression of a clean slate by removing negative information from their disciplinary histories,” said Karen Tyler, North Dakota Securities Commissioner and President of NASAA.

In this instance, an investor began a FINRA arbitration proceeding against a Maryland mutual fund broker who, according to court documents, led the investor to invest in unsuitable investments and performed negligently in managing the investor's account, resulting in a loss of \$104, 638. Before the arbitration hearing, the investor entered into a settlement agreement, receiving \$47,000 in exchange for abandoning her claims and stipulating to the expungement of all references to the dispute from the broker's state-owned CRD record.

Removing information from the CRD has been a matter of concern to state securities regulators for many years, Tyler said. State securities regulators rely on CRD information as they carry out their statutory duty to review license applications and determine if applicants meet fitness requirements under state law. In addition, regulators and investors alike rely on information in the CRD regarding disciplinary proceedings and arbitration claims to ensure that only those who comply with the law may continue to do business with the public.

Under a rule promulgated by FINRA, expungements are only warranted under the narrowest of circumstances, such as in cases where the wrong person was named in the arbitration complaint. Without those facts, the information is to remain in the broker's record for the benefit of regulators and investors alike, even if a settlement agreement provides otherwise.

“One specific purpose of the FINRA rule was to ensure that regulators like Maryland Securities Commissioner Melanie Lubin have the opportunity to intervene in proceedings to confirm expungement, so that expungements are granted only in those rare cases where they are justified. The Court's ruling affirms the important role of state securities regulators in the expungement process,” Tyler said.

NASAA is the oldest international organization devoted to investor protection. Its membership consists of the securities administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and Mexico.

**Related:** [News Release from Maryland Attorney General Douglas F. Gansler](#)

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