

Bond Case Briefs

Municipal Finance Law Since 1971

ARBITRATION - CALIFORNIA

Ronay Family Limited Partnership v. Tweed

**Court of Appeal, Fourth District, Division 1, California - May 23, 2013 - Cal.Rptr.3d - 13
Cal. Daily Op. Serv. 5224**

Tweed was a financial adviser and the president of TFI, a financial and estate planning firm. Neither Tweed nor TFI had ever been a member of FINRA. Tweed, however, had at all relevant times been registered with FINRA as an associated person of a securities broker-dealer.

Tweed opened an investment account for Ronay with CapWest, which at the time was a securities broker, investment adviser, and registered member of FINRA through which Tweed and TFI offered investments. To open the account, Ronay's general partner and Tweed, as CapWest's registered representative, filled out a new account form and signed an account agreement and disclosure statement. The agreement contained an arbitration clause.

Ronay sued Tweed, TFI, CapWest, and 13 other entities that participated in investments in tenancy-in-common interests. Ronay sought to recover damages and other relief on various theories, including breach of fiduciary duty, negligence, misrepresentation, and statutory unfair competition. The gist of Ronay's complaint was that Tweed and the other defendants misled Ronay about the risks of the tenancy-in-common investments and induced Ronay to make unacceptably risky investments, which ultimately failed.

Tweed and TFI filed a petition to compel arbitration in which they set forth the arbitration clause, alleged the existence of a controversy within the scope of the clause and Ronay's refusal to submit the controversy to arbitration, and requested an order directing Ronay to arbitrate the controversy before FINRA.

Ronay opposed the petition and motion on the ground that the arbitration agreement was unenforceable because CapWest was defunct and FINRA had cancelled its membership.

The court held that Tweed and TFI could enforce the arbitration clause of the account agreement between Ronay and CapWest as agents of CapWest and as third party beneficiaries of the agreement. It further held that even though CapWest became defunct and under FINRA Rule 12202 lost its right to enforce the arbitration clause, Tweed and TFI nevertheless retained their rights to do so.