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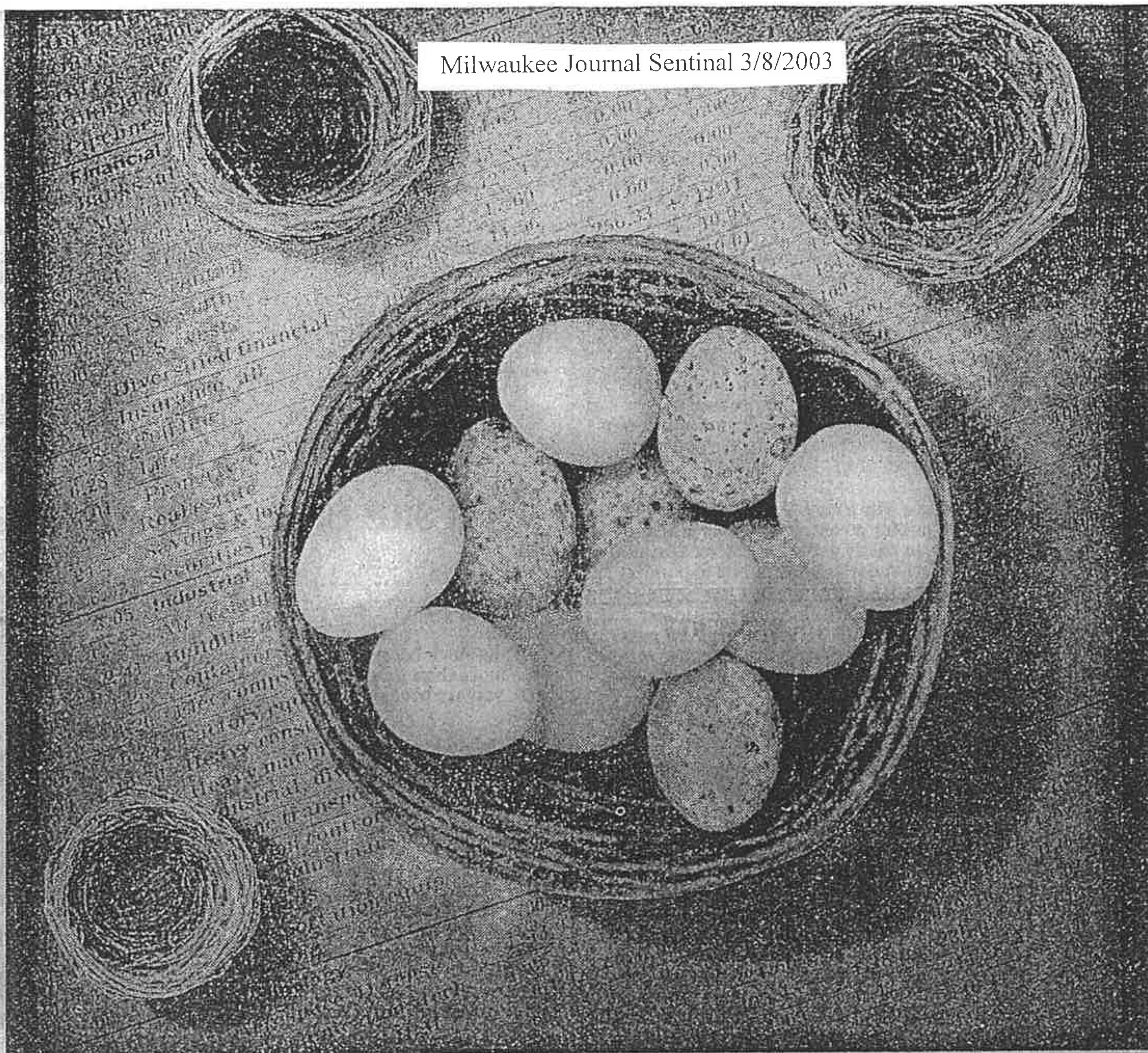

Whose fault are all those stock losses?

Arbitration is one of the few ways to get money returned, and the number trying it is climbing

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Three years into an unrelenting bear market, disgruntled investors are looking for ways to relieve the pain.

"We've all looked at our 401(k) statements," said Jim Paetsch, executive director of the Milwaukee Bar Association, "and we're all looking to take it out on somebody."

Increasingly, that somebody is the stockbroker.

The method is often arbitration — the securities industry's formal complaint process.

The number of new arbitration cases hit new highs in 2001 and 2002, and 2003 is on track for another record, according to NASD Dispute Resolution Inc., which handles about 90% of all arbitrations filed against brokers.

New arbitration filings rose 23% in January alone, compared with January of last year, it said.

Arbitration is to many investors a mysterious business, in large part because it isn't a public process like a court hearing.

Many cases are settled confidentially before they ever reach a hearing. Even when investors win an award against a broker or firm, that information can be hard to locate.

And some brokers do what they can to discourage customers from entering into arbitration.

"The branch office manager says, 'Put it in writing, we'll investigate,' and 99 out of 100 times they'll reject it after a couple of months, or even up to a year of

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AT A GLANCE

The top five reasons for arbitration claims:

- **Breach of fiduciary duty,** which can mean anything from churning an account to produce commissions to making trades without a customer's consent.
- **Unsuitability,** where a broker shouldn't have put an investor in a security because of the customer's age or situation.
- **Failure to supervise,** where the firm didn't properly oversee a broker who violated a securities regulation.
- **Misrepresentation,** where a broker didn't disclose the full risk associated with the security purchased.
- **Negligence,** where a broker may have failed to properly allocate a customer's assets by, for example, putting all of an older investor's account into risky technology stocks.

Arbitration is one way to get money back from stock losses

ARBITRATION, From **1D**

investigating," said Andrew Stoltmann, a lawyer at the Chicago law firm of Maddox Hargett & Caruso, which specializes in securities arbitration cases.

Because most investors agree to settle brokerage disputes through arbitration when they open an account, the mysterious process is often the only recourse.

Arbitration is a final and binding process held in the investor's hometown and usually overseen by a panel of three lay people, one of whom is always from the securities industry.

Arbitration has its advantages.

The process takes about 15 months, so it's often much faster than court litigation would be, Stoltmann says. And the investor has a built-in advantage because the hearing is in their home territory.

"Guys are flying in from New York against Joe Blow from Manitowoc, whose lawyer probably knows the people on the panel," said Peter Richardson, an attorney and financial planner at the Milwaukee law firm of Michael Best and Friedrich.

Investors have six years to file an arbitration compared to no more than three years to file a securities fraud lawsuit in a court setting, Richardson said. They also have the opportunity to win based on arguments that wouldn't hold up in a lawsuit, as long as they convince the panel.

"A lot of people have been arguing that brokers have a duty to stop clients from making bad decisions," Richardson said.

"That hasn't panned out in court, but people have been winning those claims in arbitrations."

On the whole, investors win about 55% of the time, and they win about 55% of their losses, Stoltmann said.

Arbitration may be a good option when investors see such red flags as a 60% drop in their account value, use of margin, heavy trading or a very heavy concentration in one sector.

"Somebody with $2.5 million who says they lost a half a million — that's what everybody else lost — and they have $2 million left. So nobody is going to feel sorry for them."

Peter Richardson, attorney and financial planner, Michael Best and Friedrich.

In Stoltmann's opinion, now is a great time to bring a complaint to arbitration because of the scandals involving Wall Street research departments.

"At the highest level, you had a multibillion-dollar, nationwide fraud taking place," Stoltmann said.

"If it happens in the highest reaches of the biggest brokerage firms, it's not a stretch to think it's also going to happen in the local office of that firm in Milwaukee, Wisconsin."

But Richardson, who says he turns down most potential arbitration cases referred to him, cautions that just losing a lot of money in the market won't necessarily win an arbitration award.

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Stoltmann and Richardson generally won't take a client with losses of less than $50,000, and usually prefer they reach $75,000 or $100,000.

That's because they are often paid on a contingency basis of 33% to 40%.

That leaves average Joes who lost $5,000 or $10,000 without a lot of options.

"Unfortunately, they don't have many alternatives apart from doing it themselves, and it's not an easy process," said Barbara Black, a law professor at Pace University Law School in White Plains, N.Y., who's co-director of its securities arbitration clinic.

Law students at the clinic, the first of its kind and one of only a handful in the United States, help investors who have lost $50,000 or less with their arbitration filings.

It may not be an easy process, but for many wounded investors, it's all they've got.

"There is a need for more investor education, although there certainly needs to be more enforcement against broker/dealer fraud," Black said.

Investors can learn how to file an arbitration on their own by going to the NASD Web site at www.nasdr.com and clicking on "dispute resolution."