



## Arthur G. Jakoby

*Partner; Co-Chair, Securities Litigation and Enforcement*

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Arthur Jakoby is a seasoned securities and commercial real estate litigator. He is a former SEC prosecutor, who has successfully represented regulated companies, individuals, board directors and corporate executives in a wide range of complex matters.

### Complex Commercial Litigation and Securities Litigation

Arthur's experience in securities litigation includes:

- Regulatory enforcement
- Class actions
- Internal investigations
- Enforcement actions before the SEC, U.S. Attorney's Office, FTC, DOL, State Attorney General's Offices, District Attorney's Offices, FINRA, PCAOB, NFA and various state regulatory departments, including the New York State Department of Financial Services and the New Jersey Department of Banking and Insurance
- Securities defense litigation
- White collar defense litigation
- Arbitrations and alternative dispute resolution proceedings

Arthur's experience in commercial disputes includes:

- Breach of M&A agreements
- Commercial contract disputes
- Real property disputes
- Construction disputes
- Consumer fraud cases
- Lease disputes

According to the 2013 edition of *US Legal 500*, Arthur is "recommended for any matter requiring intelligence, perseverance and litigating and negotiating skills." A December 2012 article in *Forbes* lauded Arthur's \$165 million dollar litigation victory: "[...]Lead attorney Arthur Jakoby [achieved a] remarkable outcome...due in large part to a clever legal strategy featuring multiple parties, [and] multiple lawsuits...[T]he adoption of a shrewd multi-faceted legal strategy now 'virtually guarantees' that these investors will achieve what was previously unthinkable - realizing a legal profit from investing in [the Madoff] Ponzi scheme."

Prior to joining Herrick, Arthur was Special Trial Counsel in the SEC's Division of Enforcement. While at the SEC, he prosecuted stock and accounting frauds, insider trading matters and stock market manipulation cases involving individuals, public companies, broker dealers and

their principals. He was also assigned as a special Assistant U.S. Attorney to the U.S. Attorney's Financial Crimes Unit for the District of New Jersey.

### Real Estate Litigation and Title Insurance Litigation

Arthur is chair of Herrick's Title Insurance Litigation Group, which represents all of the major title insurance companies in New York and New Jersey in complex real estate claims on behalf of their insureds. In his 25-year career he has successfully resolved hundreds of real estate title insurance cases in the Northeast and Mid-Atlantic, as well as many class actions involving allegations of price fixing and overcharges by title underwriters. Real estate developers, owners and title underwriters frequently call on Arthur when faced with "bet the company" cases involving breach of contract, breach of fiduciary duty and fraud claims involving large commercial properties.

Arthur taught trial practice at Cardozo Law School, a class on insider trading and securities law at NYU's School of Continuing Education and has been a lecturer on title insurance at New York Law School. Arthur has consistently been ranked as one of New York City's leading commercial litigation attorneys by Super Lawyers (2006-2020) issued by Thomson Reuters.

### Services

- White Collar Defense & Investigations
- Securities Litigation and Enforcement
- Corporate Litigation
- Title Insurance
- Insurance & Reinsurance
- Litigation
- Israel
- Real Estate Litigation & Dispute Resolution

### Education

- Benjamin N. Cardozo School of Law (J.D., 1983)
- Boston University (B.A., 1979)

### Memberships & Associations

- Board Director and Secretary, Juvenile Diabetes Research Foundation (JD RF), Westchester Chapter

## Securities and Commercial Litigation

Madoff Feeder Funds - Unprecedented Recovery from Largest Investment Fraud in History  
Representation of two Madoff feeder funds that had collectively lost over \$160 million of principal and several hundred million dollars of phantom profit in the wake of the largest investment fraud in history. Represented the funds in dozens of lawsuits including numerous class actions, an action by the Madoff Trustee, and an action by the Department of Labor. Herrick partner Arthur Jakoby ultimately orchestrated two settlements that will result in each of the funds' over 500 investors eventually recovering 100 percent of their principal investment and what is estimated to be a more than 40 percent - possibly as high as 60 percent - profit on their Madoff investment - arguably the most favorable outcome in the world for any investor who invested with Madoff through an investment feeder fund. The firm's achievements on behalf of the funds were widely covered by the media, including a Forbes report entitled "Meet The Madoff Victims That Profited From Their Investment," which lauded Arthur's litigation strategy and the result.

**Counsel and Law Firm - Successful Appeal of Contempt of Court Ruling**  
Secured a favorable ruling from the Second Circuit on behalf of attorneys and their law firm in their appeal of a district court's ruling holding them in contempt of court and sanctioning them for the alleged failure of their clients, the Republic of Iraq and Iraq's Ministry of Industry, to comply with a post-judgment discovery order. Finding that our clients had been given insufficient notice of the charges, and that the district court exceeded the bounds of its discretion when, under the circumstances, it proceeded to sua sponte find the attorney appellants in contempt, the Second Circuit vacated the order of contempt against our clients. In vacating the contempt finding, the Second Circuit also ruled that the attorneys had appellate jurisdiction even after the underlying case against their clients had settled and the judgment satisfied, a previously open question of law in this Circuit.

**\$650,000 FINRA Arbitration Award in Dispute with Former Clearing House**  
Secured an award of over \$650,000 on behalf of a retail brokerage in a FINRA arbitration against the firm's former clearing house alleged to have unlawfully refused to release the client's funds. Arthur successfully argued that the termination provision in the standard clearing agreement functioned as a penalty rather than as liquidated damages and therefore could not be enforced. The FINRA panel also required the clearing house to deliver over 10,000 shares of a NASDAQ traded biotechnology company to our client while dismissing the respondent's counterclaim.

**NYC Attorney - Successful Defense in \$80 Million Securities Fraud Civil Action**  
Defense of a New York attorney in a civil securities fraud action seeking \$80 million in damages and alleging our client and co-defendants participated in a broad-based conspiracy intended to deprive the plaintiff of its shares in a Chinese financial media company at artificially depressed prices in order to realize an unjust windfall for themselves. In response to our motion to dismiss, which included a request for sanctions against the plaintiff for naming our client, the plaintiff agreed to dismiss all claims against our client without any settlement payment.

**Witness - SEC Investigation into Accounting Irregularities**  
Represented a regional accounting firm as a witness in an SEC investigation into accounting irregularities at a publicly traded internet consumer products company.

**Former President of Guatemala - Department of Justice Criminal Action**  
Represented former Guatemalan President Alfonso Portillo in defense of a federal money laundering conspiracy charge following his extradition to the United States. President Portillo pled guilty to a reduced charge following successful negotiations with the U.S. Attorney's Office, Southern District of New York. Herrick then successfully argued to the U.S. Bureau of Prisons that it apply time already served by President Portillo - including time served in Guatemala while awaiting extradition - to his sentence, greatly reducing the period of incarceration ultimately served.

#### Witnesses - SEC and Department of Justice Investigation into Alleged Securities Fraud Scheme

Successful representation of two former principals of a dissolved hedge fund in an investigation by the US Attorney's Office and the SEC into a high-profile "pump-and-dump" scheme involving shares in a Bermuda-based reinsurance company and nearly \$20 million in alleged illegal profits. The investigation, which led to the criminal indictment of 7 individuals for securities fraud, resulted in no charges against our clients.

Investment Advisor - Litigation Related to Failed Merger and \$700 Million in Asset Losses Represented a registered investment advisor, its managers and the RIA's proprietary funds in a series of four consolidated securities class actions lawsuits, two concurrent state court actions, and a Bermuda and SDNY bankruptcy, involving more than \$700 million in claims arising out of a failed merger between the funds and a public shell company.

#### Favorable Settlement Resolving FINRA Investigation into Self-Raise Through Debt Instruments

Successfully defended a public company, its broker-dealer affiliate and the principal of each, negotiating a favorable settlement that resolved a nearly three-year long FINRA investigation into allegedly false and misleading debt instruments used to raise money for the broker-dealer that did not adequately disclose certain material information, including the use of the raised funds.

#### Tigrent Inc. - Reverse Merger

Represented Tigrent, Inc., global leader in high-quality and value-based training, conferences, publications, technology-based tools and mentoring to help customers become financially knowledgeable, primarily through its Rich Dad™ Education brand, in a reverse merger into a public shell company that allows Tigrent to be a public company.

#### Former Bank Directors - Favorable Resolution of FDIC Investigation

Negotiated a favorable settlement on behalf of three directors of a failed New York City community bank, resolving claims by the FDIC that the directors had failed to exercise due care in their oversight of the bank's loan portfolio.

#### Regional CPA Firm - SEC and PCAOB Investigations into Improper Partner Rotations

Representation of regional certified public accountant in connection with SEC and PCAOB investigations into alleged improper partner rotation and related alleged accounting practice improprieties. Herrick was able to reach a settlement with regulators in which the client admitted no wrongdoing.

#### Broker-Dealer and Its Principal - FINRA Disciplinary Hearing

Represented an embattled broker-dealer and its founder in a 12-day disciplinary hearing initiated by FINRA alleging multiple counts of fraud, failure to supervise and general violations of FINRA rules.

#### NYC Attorney - Joint US Attorney and SEC Investigations into Alleged Misappropriation of Funds and Market Manipulation

Represented a prominent former New York City attorney in a joint federal criminal investigation, conducted by the U.S. Attorney's Office, District of Columbia and the SEC, into alleged misappropriation of funds of a large foreign public company and market manipulation of the securities of several small U.S. public companies. Herrick was able to resolve the federal criminal charges against our client through a guilty plea to a single count of obstruction of justice, resulting in a far lower sentencing guidelines range than would have resulted had the client pled to multiple securities fraud charges, as the Department of Justice was initially contemplating. The client was sentenced to two years of probation, later reduced to one year. Notwithstanding the criminal charges involving the sale of securities, the SEC did not bring charges.

#### Investment Advisor - Successful Conclusion to Internal Investigation

Conducted an internal investigation for a nationally recognized investment adviser to a series of hedge funds following a whistleblower's complaint concerning SEC compliance and operational issues. Upon submission of a report of our investigation, which determined that the whistleblower's allegations had no merit, the SEC never brought charges.

#### Brokerage Firm President - SEC Action

Representation of the former president and owner of a brokerage firm in post-trial proceedings following an SEC lawsuit involving the alleged employment of a barred person.

#### Canadian Investor - SEC Insider Trading Action Settled with No Admission of Wrongdoing

Represented a Canadian investor in an SEC insider trading lawsuit filed in the Southern District of New York alleging that our client received stock tips from a business associate with access to insider information on upcoming mergers and acquisitions. After intensive negotiations involving individuals from the top echelon of the SEC's Division of Enforcement in Washington, we were able to reach a settlement resolving the charges against our client without any admissions of wrongdoing. No criminal charges were ever brought.

#### General Counsel - Options Backdating Class Action

Representation of the former General Counsel of a major technology company in a class action against the company concerning stock options backdating.

#### Hedge Fund Collapse - SEC Investigation

Representation of the chief operating officer of a \$1 billion hedge fund in connection with an SEC investigation into the fund's collapse and liquidation.

#### Securities Trader/Broker-Dealer - Investigations

The principal of a securities trader/broker-dealer in connection with investigations by the New York State Attorney General and the SEC into mutual fund trading practices including market timing and late trading.

#### Former CEO - SEC Investigation

The former CEO of a major fiber optic company in an SEC investigation of accounting irregularities. After a grueling deposition and an in-depth Wells Submission, the SEC determined not to pursue any action against our client.

#### Private Company Officers - SEC Investigation

Representation of officers of a non-public company in an SEC investigation of the company's unregistered offerings. The SEC alleged that the offerings violated various securities laws, but we convinced the SEC's New York Regional Staff to recommend that charges not be brought against these individuals.

#### Pharmaceutical Company - Insider Trading Investigation

Representation of the senior management of a pharmaceutical company in an SEC insider trading investigation of a PIPE offering.

#### Securities Broker - NASD Regulatory Proceeding

Representation of a broker in an NASD administrative proceeding alleging unsuitable and unauthorized transactions made in numerous clients' accounts.

#### Boards of Directors - Internal and SEC Insider Trading Investigations

Conducted an insider trading investigation on behalf of the boards of directors of two affiliated publicly owned computer software companies, and represented them in a related SEC investigation.

#### Corporate Director - Dismissal of Securities Class Action Complaint

The former CEO of a publicly owned telecommunications company in two securities fraud class actions stemming from the company's bankruptcy in the wake of the dot-com bubble burst. The first complaint alleged fraud in connection with disclosures about the company's credit facility. The plaintiffs then filed a second class action alleging that our client engaged in accounting improprieties and caused the company to issue false financial statements. The court granted our motion to dismiss the second complaint on the grounds that plaintiffs were on inquiry notice of a potential fraud long before they asserted their claims, and dismissed the action as barred by the statute of limitations. We were able to obtain a settlement of the entire matter on terms that were very favorable to our client.

#### Independent Directors - Internal Investigation

The independent directors of a public corporation in conducting an internal investigation into shareholder derivative claims.