

Kenneth F. Berg

Partner



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Practices/Industries

- Securities & Commodities Litigation
- Consumer & Commercial Litigation
- Complex Business Litigation

Education

Washington University
(A.B., *magna cum laude*,
1976)

Boston College Law School
(J.D., *cum laude*, 1979)

University of Chicago
(Bigelow Fellow, 1981-1982)

Overview

Ken has extensive experience in complex commercial and business litigation representing financial institutions. His expertise includes bank and broker-dealer defense; FCM/IB defense; SEC, CFTC, FINRA, NFA, and Exchange investigations and enforcement actions; trade secrets/unfair competition; and contract disputes. He has defended securities and commodities class actions in New York, District of Columbia, and Chicago federal courts. He also regularly represents financial institutions in arbitration actions at the NFA, FINRA, and AAA. Ken has achieved the highest rating, AV Preeminent[®], from Martindale-Hubbell[®] and has been continuously named to the Illinois Super Lawyers list and recognized as a “Leading Lawyer” in Illinois.

Experience

- Defended financial institutions in class actions in New York, District of Columbia, and Chicago federal courts.
- Recovered 100 percent on a \$500,000 untimely and unsecured claim in the bankruptcy of a Forex dealer affiliated with MFGlobal, Inc.
- In a case of first impression before the AAA and on appeal to the Illinois Appellate Court, successfully defended a national bank as successor to WaMu arguing that the claim was barred by the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (“FIRREA”).
- Defended a brokerage firm against alleged violations of failure to supervise and anti-money laundering rules when the cash balance of a Pakistani customer’s account was refunded to a fictitious bank account in Pakistan.
- Defended a major national bank against allegations of wrongdoing in connection with acting as the paying agent for bonds issued by the German government.
- Defended a major national bank against alleged violations of the federal Fair Credit Reporting Act and defamation.
- Defended a national broker-dealer against multimillion dollar claims arising out of the sale of O’Hare Airport expansion bonds due to the bankruptcy of United Airlines.
- Defended claims arising out of alleged wrongful termination of employment, non-compete agreements, and raiding cases.
- Defended financial institutions in arbitration actions at the NFA, FINRA NASD, NYSE, and AAA for losses allegedly caused by mishandling of brokerage accounts.
- Defended a national commodities firm against charges brought in Florida federal court by the CFTC Enforcement Division that it was committing systemic fraud in violation of the Commodity Exchange Act.
- Represented a receiver appointed by a Chicago federal court in connection with recovering investors’ assets squandered in a Ponzi scheme.

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Experience (Cont)

- Testified as an expert witness on CFTC regulations and compliance procedures relating to margining of a customer account and promotional materials.

Reported Cases

- *Perik v. JPMorgan Chase Bank, N.A.*, 2015 IL App (1st) 132245 (Jun. 5, 2015) (case of first impression).
- *Korber v. Bundesrepublik Deutschland*, 739 F.3d 1009 (7th Cir. 2014), *cert. denied*, 139 S. Ct. 2729 (Jun. 9, 2014) (dismissal of putative class action against bond trustee for fraud and breach of fiduciary duty).
- *Amacker v. Renaissance Asset Management*, 657 F.3d 252 (5th Cir. 2011) (dismissal of clearing firm that cleared Ponzi scheme trades).
- *Moscatiello v. JJB Hilliard-WL Lyons, Inc.*, 939 A.2d 325 (Pa. S. Ct. 2008) (enforcement of arbitration award dismissing arbitration against broker-dealer).
- *CFTC v. Trinity Financial Group, Inc.*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. 27,179 (S.D. Fla. Sept. 29, 1997), *aff'd in part, rev'd in part* 178 F.3d 1132 (11th Cir. 1999) (defense of CFTC enforcement action).
- *Southmark Corp. v. Cagan*, 999 F.2d 216 (7th Cir. 1993) (representation of receiver appointed by SEC).

Presentations

- “DOL Fiduciary Rule and the Futures and Derivatives Industry,” Midland IRA and Ulmer DOL Fiduciary Rule Seminar (August 2017)
- “Comparison of SEC and CFTC Early Reporting Obligations,” Futures Industry Conference, Washington D.C. (April 2015)
- “Good Advice: What to Expect From Your Lawyer,” Introducing Broker Seminar (April 2013)
- “Is Aiding and Abetting Liability Really Dead?,” Hot Topics: Financial Services Update 2008 (December 2008)
- “Marketing of Hedge Funds,” Hot Topics: Financial Services Update 2006 (May 2006)
- “Secondary Liability,” Hot Liability Topics for Financial Service Providers (March 2005)

Publications

- “The Seventh Amendment Right to Jury for Violations of the Commodity Exchange Act - Parts I and II,” *Ulmer & Berne LLP* (April 2019)
- “The Illinois Caregiver Act: Mercy with Justice,” *Illinois State Bar Association Real Estate Newsletter* (May 2018)
- “Suitability: At the Corner of Series 3 and Series 7,” *Nat'l Introducing Brokers Assoc. J.* (Winter 2014)
- “The Bail Reform Act of 1984,” 35 *Emory Law Journal* 685 (1985)
- “Implied Malice—The Coming Constitutional Crisis in Tennessee,” 15 *Mem St. Law Review* 369 (1985)
- “Model Adoption Act & Commentary,” 29 *Family Law Quarterly* 103 (1985) (with ABA Executive Committee on Adoption)
- “Are All Murderers Unfit Parents?,” 29 *Journal of Family Law* 415 (1982)
- “The Israeli Standard Contract Law,” 28 *International and Comp. Law Quarterly* 560 (1979)

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Involvement

Professional Affiliations

- Chicago Bar Association
- Securities Industry Association (*Member*)
- Futures Industry Association (*Member*)
- National Introducing Brokers Association (*Member*)
- Northern Illinois University School of Law (*Visiting Professor, 1986-1987*)
- University of Memphis Law School (*Professor of Law, 1983-1986*)
- University of Chicago Law School (*Lecturer in Law, 1981-1982*)

Community Involvement

- JNF Chicago (*Board of Directors*)
- JNF Loop Professionals Group (*Founding Member*)
- Ida Crown Jewish Academy (*Past Member, Board of Governors*)
- Congregation Or Torah (*Past Officer*)
- Chicago Volunteer Legal Services (*Former Volunteer*)

Honors & Distinctions

- AV Preeminent Peer Review Rated – Martindale-Hubbell
- Named to the Illinois Super Lawyers list (2007; 2009-2021)
- Named a “Leading Lawyer” in a survey of lawyers by the Law Bulletin Publishing Company (2010-2020)

Admissions

- State of Illinois
- U.S. Court of Appeals, Fifth Circuit
- U.S. Court of Appeals, Seventh Circuit
- U.S. Court of Appeals, Ninth Circuit
- U.S. Court of Appeals, Tenth Circuit
- U.S. District Court, Northern District of Illinois – Trial Bar