

## Former Merrill Exec Wins Skirmish Over Losses in His Stock Plan

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*by AdvisorHub Staff*

A former Merrill Lynch regional manager has defeated Merrill Lynch's efforts to prevent him from seeking millions of dollars of alleged damages in his company stock plan in arbitration proceedings.

The decision in U.S. District Court in Jacksonville, Florida, on Wednesday, permits David Middleton to bring his allegation of losses of more than \$20 million in his shares as a result of Merrill's concealing its subprime mortgage and mortgage-backed securities losses that forced it into the hands of Bank of America.

Middleton's attempt to seek some \$60 million (reflecting his claim of treble damages under the federal RICO anti-racketeering statute) is one of 38 similar cases that have been filed in Financial Industry Regulatory Authority arbitration forums late last year and this year by former Merrill retail brokerage employees. Middleton, who began his Merrill career as a broker in Atlanta in 1965, climbed the management ranks to become Southeast Region district director in 1991.

In total, the former Merrill retail brokerage executives or their estates, who argue they were unaware of the institutional side of the company's business, are seeking just under \$900 million from Merrill Lynch, Pierce, Fenner & Smith, the broker-dealer arm of the firm.

Merrill, which believes it can receive more sympathetic hearings in trial courts than in arbitration, has been arguing that the stock in the executives' plans was issued by Merrill Lynch & Co., the broker-dealer's parent, which is not a Finra member and is therefore not subject to agreements requiring employees and customers to arbitrate their claims. It also says that the former employees were not customers, and were therefore not bound by predispute arbitration agreements.

In his ruling, U.S. District Judge Harvey Schlesinger denied Merrill's attempt to stop the Finra arbitration.

Middleton and the broker-dealer are "bound by valid arbitration agreements due to the customer relationship springing from MLPF&S' management of Middleton's broker able account" as well by the retail official's signing of his Form U4, which his lawyers say compel arbitration rather than court hearings, the judge wrote.

"We believe that today's decision by the Middle District of Florida is not only the correct one, but will be persuasive to the other federal courts dealing with these cases," said Michael Taaffe, whose law firm Shumaker Loop Kendrick is co-counsel on the cases and which has been arguing that Merrill has withheld the former managers' customer account agreements from their discovery motions.

A Merrill spokesman said he was not immediately able to comment as of Thursday morning.

Other former Merrill retail executives who have initiated arbitration claims include the estate of former Merrill Lynch western region director James Billington and former Merrill chief economist Donald Straszheim.

The Florida judge's 11-page decision is the first to comprehensively deny Merrill's attempt to keep the cases out of arbitration, said David Wyant, a lawyer who works with Taaffe. A New Jersey district judge last month issued a two-page order staying the federal case pending Merrill analyst Stephen Sakwa's attempt to win an award in Finra arbitration.

Another federal judge in Florida on Monday denied a former Morgan Stanley broker's attempt to have the court quash a restraining order on his contacting former clients, clearing the way for the firm to seek an expedited decision in Finra arbitration.

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