Bank of America Corp : Panel Rules Merrill Must Pay Brokers $10 Million In Deferred Comp Case

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An arbitration panel ruled that Merrill Lynch must pay more than $10 million to two brokers who claimed the firm committed fraud by denying their deferred compensation plans to vest.

In a decision that sharply criticized Merrill for, among other things, "discovery abuses and delay tactics," the Financial Industry Regulatory Authority arbitration panel found that the firm wrongly denied compensation to former brokers Meri Ramazio and Tamara Smolchek.

The panel said that Merrill's senior management, "intentionally, willfully and deliberately engaged in a systematic and systemic fraudulent scheme" to deprive Ramazio and Smolchek of their rights and benefits under its deferred-compensation programs as well as other benefits to avoid liability after Bank of America Inc. (BAC) acquired Merrill in 2008.

An estimated 3,000 brokers left the firm after the acquisition, and many of them are seeking compensation they say was improperly denied.

Merrill spokesman Bill Halldin said the panel's decision is wrong and the amount of the award bears no relation to the damages at issue.

"We have asked a federal court to overturn the award on the basis of the panel's handling of this matter, limits that were imposed on our ability to present our case and the failure of the panel's chair to disclose important information about conflicts of interest," Halldin said.

Ramazio and Smolchek alleged breach of contract, negligence and fraud, in addition to other claims, related to the disposition of their deferred compensation plans after Merrill was acquired, according to panel documents.

Employment contracts generally require a broker to stay at a firm for several years before they get vesting rights to the money piling up in their tax-deferred accounts. The vesting terms for several Merrill Lynch deferred-compensation programs, however, gave brokers rights to that money if they left with "good reason," attorneys have said.

The panel was "shocked" that although 3,000 advisers left Merrill after the acquisition, not one claim has been approved for vesting for "good reason" under the deferred-compensation programs, the documents say.

It ruled that Merrill must pay Smolchek about $4.3 million and Ramazio $875,000 in compensatory damages for unpaid wages, unpaid deferred compensation, lost wages, lost book, value of business and reputation. Further, as a result of Merrill's "intentional misconduct," it awarded punitive damages of $3.5 million to Smolchek and $1.5 million to Ramazio.

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