Herald-Tribune

Sarasota law firm a winner in fight between Merrill Lynch, former brokers

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Published: Wednesday, April 18, 2012 at 8:41 p.m.

Shumaker, Loop & Kendrick attorney Michael Taaffe was the lead attorney in a case that resulted in a $10.25 million award

It is sometimes hard to know who to root for between Wall Street banks and stockbrokers, but at local law firm Shumaker, Loop & Kendrick, a fight between Merrill Lynch and some former brokers has turned into a boon for employment and billable hours.

The firm made a splash earlier this month when it won a $10.25 million award from an arbitration panel for two Boca Raton brokers -- Meri Ramazio and Tamara Smolchek -- who claimed deferred compensation after they left the investment bank following a taxpayer-backed acquisition by Bank of America in late 2008.

Thanks to an earlier win in another Boca Raton case in October 2010, the Sarasota practice appears to have become the law firm of choice for brokers who jumped ship during those turbulent times.

The firm now represents 825 former Merrill Lynch brokers out of the 3,200 who left after the Bank of America acquisition, including about 50 who live between Tampa and Sarasota, said Michael Taaffe, lead attorney on the case.

Taaffe heads Shumaker, Loop's broker-dealer team, which represents financial advisers and deals with their frequently contentious movements when they leave one firm, are hired by another and take their clients with them.

The broker-dealer team had consisted of four lawyers, but with the influx of Merrill Lynch cases two attorneys have been added, David Wyant Jr. and Jeremy Halpern, both graduates of Pine View High School. The other local lawyers involved in the cases are Jarrod Malone, Michael Bressan and Scott La Porta.

For all involved, the case has become a consuming one. Taaffe says he worked 3,400 hours last year, a 65-hour-a-week average, and billed 2,700 hours, which is more than 50 hours a week.

Through the end of the year, the Shumaker, Loop team has an average of one trial scheduled every two weeks, including a legal traffic jam in October.

"I think it's five trials in five different states in one week," Malone said.

For its trouble and long hours, though, Shumaker, Loop will be well compensated: The firm receives 40 percent of any damages collected on behalf of its clients.

The Merrill Lynch cases involved a company deferred compensation plan. Generally, it takes several years for a broker to become vested in the plan, and if that broker leaves before the vesting period, he or she loses their rights to the money.

But the Merrill Lynch plan allowed brokers to become immediately vested if they left after a change in control of the firm and for "good reason," although the firm denied requests for payments from its exiting brokers.

A Financial Industry Regulatory Authority arbitration panel was critical of Merrill Lynch, writing in its decision that the firm "intentionally, willfully and deliberately engaged in a systematic and systemic fraudulent scheme" to deprive former brokers of their deferred compensation. The panel also criticized the firm's "ongoing discovery abuses and delay tactics" during the proceedings.

Included in the awards to Ramazio and Smolchek were $5 million in punitive damages, which the panel said it added to "punish respondent Merrill Lynch for engaging in such fraudulent misconduct and to deter such misconduct in the future."

The panel added that it was "shocked" that even though more than 3,000 brokers left the firm after the buyout, no one who asserted that they left for "good reason" was paid.

Almost immediately after the arbitrators' award, Merrill Lynch asked the U.S. District Court in West Palm Beach to overturn the decision. It argued the head of the three-person arbitration panel was biased and "demonstrated overt hostility toward Merrill Lynch."

The arbitrator's husband is a securities lawyer who specializes in bringing lawsuits against financial services firms, and has represented parties in lawsuits against Merrill Lynch, according to the bank's motion to vacate the award.

The bank's federal lawsuit notes that the arbitrator's husband was quoted in a Florida newspaper as saying that beating Merrill Lynch was a "highlight" of his career.

As a result, the firm contends it did not receive a fair hearing. Merrill Lynch argued that the brokers brought their case two years after voluntarily leaving the firm and taking jobs with a competitor.

In his response in the federal case, Taaffe calls Merrill Lynch's allegations against the arbitrator "unfounded."

Regardless, the bank is raising questions about just one of three arbitrators in a unanimous decision. The decision only required a majority vote and the two "neutral" arbitrators both sided against Merrill Lynch, he noted.