Back to main

Judge Denies Merrill Attempt To Overturn $10 Million Arbitration Award

By Caitlin Nish

NEW YORK--Merrill Lynch has lost its bid to overturn an arbitration panel's $10 million award for two brokers who claimed the firm committed fraud by denying them deferred compensation.

Merrill had asked a Florida federal court to throw out the decision, claiming the chairwoman of the Financial Industry Regulatory Authority arbitration panel was biased. It further accused the three-member panel of misconduct and exceeding its powers.

Merrill Lynch spokesman Bill Halldin said the firm is reviewing the decision.

The case stems from the panel's April ruling that Merrill fraudulently denied brokers Tamara Smolchek and Meri Ramazio deferred compensation, which they were owed after leaving the firm in the wake of its acquisition by Bank of America Corp. (BAC) in 2008.

The brokerage was ordered to pay Ms. Smolchek about $4.3 million and Ms. Ramazio $875,000 for unpaid wages, unpaid deferred compensation, lost wages, lost book, value of business and reputation. It also awarded punitive damages of $3.5 million to Ms. Smolchek and $1.5 million to Ms. Ramazio, based on Merrill's "intentional misconduct."

Arbitration rulings are notoriously difficult to get a court to overturn, and can only be done so under special circumstances. In its petition to vacate the award, Merrill contended that the chairwoman, Bonnie Pearce, failed to disclose that her husband, a securities lawyer, represented clients adverse to Merrill and also demonstrated overt hostility toward Merrill throughout the proceedings. As evidence, the firm had pointed to her husband's comments in a 2005 newspaper article about a legal victory over Merrill.

But in his decision Monday, Judge Kenneth A. Marra noted that after Merrill filed its petition, it later revealed evidence indicating "that it knew at least some of the information Mrs. Pearce is alleged to have withheld." Merrill disclosed that its counsel had in its files eight pages printed from Mr. Pearce's website, each dated before the arbitration hearing.

Judge Marra concluded that Merrill knew the relevant information and failed to raise the issue of Mrs. Pearce's partiality before the hearing began.

"The hearing then proceeded for at least five days, with Merrill Lynch objecting only after Mrs. Pearce announced several decisions adverse to it," the judge wrote.

He further noted that he reviewed the transcripts of the arbitration hearing and found that the panel had reasonable basis for the actions it took.

"While the panel's decisions were in some cases detrimental to Merrill Lynch's case, Merrill Lynch has not demonstrated that it was unfairly prejudiced to the point of being denied a fundamentally fair hearing," he wrote.

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