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DJ BROKER'S WORLD: Ex-Merrill Brokers Keep Bonuses, Get Windfalls

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--Three recent cases allow former Merrill Lynch brokers to keep their bonuses

--Merrill Lynch must also pay damages to the brokers, who filed counterclaims against the firm

--Wirehouses may have to be cautious about filing bonus cases against brokers they force out

By Suzanne Barlyn and Jennifer Hoyt-Cummings
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NEW YORK (Dow Jones)--Wirehouses may have to tread more carefully in seeking the return of bonus money from former brokers, particularly those who were forced out of their jobs.

In three recent cases, arbitrators ordered a brokerage--Bank of America Corp.'s (BAC) Merrill Lynch unit--to fork over money to ex-advisers.

The cases had some important factors in common: Merrill Lynch initiated the claims, and the former financial advisers responded with their own counterclaims. In every instance, the brokers said they were squeezed out of their jobs and, while the company said they still had to return big parts of their bonuses, the brokers sought damages for things such as alleged breach of contract and lost commissions.

In each instance, a Financial Industry Regulatory Authority, or Finra, arbitration panel sided with the broker. That left Merrill Lynch in the position of having to write a check in cases where they aimed, instead, to collect.

In one of the decisions, for example, Merrill on June 14 was ordered to pay \$1.55 million to a former broker who said the firm harassed his wife as it sought repayment of bonus money. Merrill initially sought the return of \$970,000.

Bonuses can reach millions of dollars, and are carefully structured as loans forgiven over time, such as a seven-year period. Brokers who leave early are required to pay back a prorated portion. Broker victories in disputes over repayment are relatively rare.

Some lawyers who handle this type of case said the recent decisions suggest arbitrators may be taking a closer look at brokers' allegations of mistreatment, particularly by the biggest brokerages, known as wirehouses.

"Arbitrators are no longer willing to rubber-stamp all claims in note cases," said Raymond Moss, a securities lawyer for Sims Moss Kline & Davis LLP in Atlanta. "They're looking more carefully at the underlying facts and conduct of both parties before, during and after employment."

In May, arbitrators ruled that former Merrill adviser Robert Connell could keep all of his \$3.3 million signing bonus, which the firm wanted to recoup. He resigned from the firm in July because he was about to be terminated, according to his lawyer, Thomas Lewis, of Stark & Stark in Lawrenceville, N.J. Lewis said he argued that Merrill, after aggressively recruiting Connell, forced him out to recoup the bonus.

Questions of how aggressively to pursue brokers for unpaid bonus money are now more of a concern at wirehouses, said Lewis. Brokerage firms that are too aggressive may find their efforts to recoup bonuses can backfire, especially when certain details come to light during the arbitration hearing, he said.

A third decision in April was mixed. The panel decided that Ronald Wo, a former Merrill broker in Honolulu, didn't need to pay back \$811,633 in bonus money and required Merrill to pay him around \$505,000, including \$309,000 in legal fees. Two other brokers involved in the suit had to return a combined total of \$4.6 million in bonus money, but the panel ordered Merrill to pay them more than \$1.4 million for their counterclaims.

As is customary, the arbitrators didn't specify their reasoning in the decisions. A Merrill Lynch spokesman said the firm prevailed "in at least a dozen of these cases" in the last three months alone. "We pursue these cases only in those situations where an adviser refuses to abide by their agreement to repay these promissory notes when they leave the firm," he said.

The recent rulings may also reflect a more careful approach by lawyers who represent brokers in bonus disputes, who are aware of how difficult these cases are to win. When a client owes a firm a large amount of money, arguing that his bosses treated him badly or broke promises of their own can often be a tough sell.

"I think what you're seeing is that lawyers are becoming more selective about culling the defenses and counterclaims that really do have merit," said Craig Stein, a securities lawyer for Stein & Stein P.A. in Palm Beach, Fla. "You don't want to come in with a counterclaim unless you can actually land it."

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