

Clients Accuse \$1.2B Ex-Merrill Advisor of Unauthorized Trades, Overcharging

Two former clients of a \$1.2 billion ex-Merrill Lynch advisor claim he made unauthorized trades and charged them exorbitant fees.

An attorney for the clients says Thomas Buck allegedly engaged in unauthorized trading of bonds and reaped excessive commissions.

"People thought they were paying lower commissions, but it was pretty excessive -- almost double what they were supposed to be paying," says Indianapolis-based attorney Mark E. Maddox. "We really don't know what sort of losses were suffered."

Buck, who found himself dismissed from Merrill last month, through his lawyer disputes the reasons for his termination, which include mismarking bond cross-trade order tickets as unsolicited, according to his Form U5 filed with FINRA.

Additionally, the U5 notes Buck was terminated for "conduct including failing to discuss service level and pricing alternatives with a customer, providing inaccurate information to firm management during account reviews regarding this issue ... and providing information to a client during an active account review that did not correspond to the firm's records, resulting in management's loss of confidence."

The allegations demonstrate how a billion-dollar producer could also be a liability, and even a hint of advisor impropriety will make a firm nervous, say several securities law experts.

"Once a firm puts you under a microscope, if you start to accumulate minor infractions, the firm might then start to conclude, if there's smoke, there's fire," says Marc Dobin, a Jupiter, Fla.-based securities mediator who also represents brokers in regulatory matters. "Even though that may not be the case, once the firm makes up its mind, you're an at-will employee. Boom! You're done."

Merrill Lynch spokesman Bill Haldin declined to comment on Buck's termination or the client allegations.

TERMINATION QUESTIONED

Englewood, N.J.-based attorney Brian Hamburger characterized the reasons for termination listed in the U5 against his client as minor.

"None of the actions that comprised the bulk of the U5 that Merrill Lynch relied upon are hardly actions anyone could watch out for," Hamburger says. "Any producer doing any substantial volume of work would find themselves in a vulnerable position, given the standard that Tom Buck's termination establishes."

Dobin agreed with Hamburger's assessment, except for the last claim lodged by Merrill. "An active account review is a serious thing," he says. "It's a good way to learn if the client knows what's going on in their account, and that the broker is doing everything right."

However, New York securities attorney Adam Gana says that all of the reasons stated in Buck's U5 -- particularly regarding information about trades -- were reasons enough for termination.

"That is exactly the thing that can get someone terminated," Gana says. "If the firm found any kind of impropriety, absent any contract stating otherwise, they can terminate him. There could have been underlying issues also with Buck at Merrill that caused the termination beyond what was stated in the U5. As an at-will employee, Merrill, absent a contractual obligation, can fire them whenever they like."

"In my reading, Merrill is suggesting that there may have been some unsuitable trades in some of the broker's accounts and that he misreported information to supervisors, which could be a problem," Gana says. "There could be potential exposure to liability here. The firm is ultimately on the hook for an advisor's conduct. If he's a billion dollar producer, they could be on the hook for a lot of money."

'ADMITTING BROKER'S BAD ACTS'

Attorney Ross Intelisano of Rich Intelisano & Katz in New York found Buck's U5 to be unusual because of the degree of detail it has. It left Merrill open to customer claims, he says.

"This is the fruit of some very large dispute between broker and firm," he says. "The firm is actually admitting the broker's bad acts," he adds.

Recruiter Danny Sarch, president of Leitner Sarch Consultants, notes that the U5 language twice mentions that Buck did not provide accurate information to Merrill prior to any known customer allegations.

"I see firms are being proactive," says Sarch. "Whether they must protect the firm's reputation even at expense of somebody's career and in the absence of customer complaints."

Prior to his departure from Merrill, Buck only had one client complaint alleging excessive fees and unauthorized purchase of a security listed on his BrokerCheck record. The complaint was settled for \$75,000 in 2006.

Buck had been at Merrill since 1982, according to FINRA records. Barron's ranked him among its top 100 financial advisors last year, listing his total AUM at about \$1.2 billion.

His daughter Ann has been a financial advisor with him since 2009, according to FINRA. She also has been a cheerleader with the Indianapolis Colts for three years, according to the team's website. She left the firm voluntarily.

'TOO LATE'

Hamburger says brokers should consider how much value they place upon the concept of loyalty when brought into a meeting with management, firm attorneys and confronted with a firm's claims.

"Brokers need to know -- it doesn't matter who they think they are -- when they find themselves in a meeting with management above branch level, and legal counsel is present, they should politely dismiss themselves and obtain counsel. Nothing good comes out of these meetings."

"Their inclination is they want to help, so they participate," he adds. "When the light is shone on them, their next inclination is to defend themselves, because they can't believe they are being characterized in that manner, but by then it is too late. The firm can take comments made in those meetings and extract what it needs to shine a different light on them.

"My opinion of these interviews is that it's an interrogation designed to collect information to support a position already established. The firm already has made the decision to terminate, and they need data to substantiate the decision."

Hamburger dismissed as naïve the notion that firms were taking a no-tolerance policy toward even the smallest regulatory infractions. He suggests firms have a different motivation to conduct such inquiries: saving millions in deferred compensation costs and being able to redistribute the large books of clients built up in a veteran practice.

"When you have firms under such a high degree of scrutiny from shareholders and regulators, they don't have the luxury of making good, long-term decisions," Hamburger says. "They are making decisions for the short term, and that's not a position where they are making decisions for clients or those who work there, but for shareholders and regulators."

"It's also a great way to redistribute a book among folks that are coming out of banks who do not necessarily have the same skills to capture their own business," he adds. --*With reporting from Andrew Welsh.*