REUTERS

Ex-Wells Fargo broker scores partial win in legal dispute

Wed, Aug 29 2012

By Suzanne Barlyn

Aug 28 (Reuters) - A former broker for Wells Fargo Advisors who alleged the brokerage effectively forced him to quit scored a partial victory in a fight against the brokerage unit owned by Wells Fargo & Co.

An arbitration panel found Wells liable for a total of $691,000 in the case, but the Kansas-based former broker, Randall A. Fisher, also owes Wells $740,000.

The Financial Industry Regulatory Authority arbitration panel ordered him on Monday to pay the brokerage nearly $531,000 for the balance of a signing bonus he received when joining Wells in 2008, plus almost $209,000 for interest, legal fees and costs, according to the ruling posted in FINRA's arbitration database on Tuesday.

Ultimately, Fisher will have to write a check to Wells for $48,000, which is a "nice win," according to Ross Intelisano, a New York-based lawyer For Rich & Intelisano, LLP who represents brokers in arbitration cases. Brokers rarely win in countersuits they raise against brokerages that are trying to recoup bonus money from them, said Intelisano, who is not involved with the Fisher case.

A Wells Fargo spokesman declined to comment immediately. A lawyer for Fisher did not return a call requesting comment.

As is customary, the FINRA panel did not include the reasons for the decision.

Fisher joined Wells Fargo in 2008, after working nearly 9 years for another firm, according to regulatory filings. Fisher, who is no longer a FINRA-registered broker, worked at Wells for nearly 2 years.

Wells filed a claim against Fisher in 2011, seeking repayment for the bonus.

Signing bonuses, often referred to as "employee forgivable loans," are paid upfront and structured as loans forgiven over time, usually a 7-year period. Brokers who leave the firm, or whose employment is terminated before the loan is fully forgiven, must return part of the payment.

Fisher filed a counterclaim against the firm for breach of contract and "constructive discharge," also in 2011, ultimately asking the panel for more than $1.8 million in damages and other fees at the time of the hearing.

Arbitration panels frequently order brokers to repay money they owe for signing bonuses, lawyers said. But brokers rarely prevail in arguments they raise to justify not paying, they said.

Brokers in "constructive discharge" cases argue that the brokerage created an environment in which the broker could not work and was forced to quit, according to Francis Curran, a lawyer at McCormick & O'Brien, LLP in New York who is not involved in the case.

Those claims typically stem from promises made to the broker during the recruiting process, such as providing sales and marketing support, that the brokerage did not honor, said Curran.