# Arbitration Panel Turns the Tables on Merrill Lynch

by David Peterson - • Oct. 11, 2016 • 1 min read • original


In a rare turn of events, a Financial Industry Regulatory Authority arbitration panel denied Merrill Lynch's attempt to recoup $1.6 million from two former brokers and instead ordered the firm to pay the brokers $800,000 in damages.

Roman Reed and Victor Barrionuevo were discharged from Merrill Lynch on February 25, 2015 for allegedly mishandling a customer complaint. Less than two weeks later, Merrill filed a claim seeking almost $800,000 from each broker for the balance on their promissory notes.

Reed and Barrionuevo, who were recruited from UBS in Houston in 2009, filed a counterclaim alleging that they were terminated without cause and that Merrill Lynch had an economic incentive to fire them in order to claw back the balance on the promissory notes and hold onto the assets.

The three-person arbitration panel denied Merrill's claim on the promissory-note balances and ordered it to pay each broker $400,000 in compensatory damages and $107,000 each for attorney's fees. The brokers had asked for almost $30 million combined.

"The evidence bears out that the brokers were fired because Merrill Lynch wanted to retain the customer's lucrative business without having to honor the transitional compensation contract with the brokers," the panel wrote.

A Merrill Lynch spokesman said in an email that the firm disagrees with the outcome, although he emphasized that they were "pleased that the arbitrators rejected the nearly $30 million demand that came at the conclusion of the proceedings."

With somewhat unusual specificity, however, the arbitrators wrote that Merrill aimed to retain a multi-million dollar client who the firm's own investigators found had made meritless unauthorized trading charges against the brokers "without having to honor the transitional compensation contract with the brokers."

The award decision characterized witness testimony on behalf of Merrill as "contradictory" and "unbelievable," and questioned the firm's "inability to explain why, if the brokers were wrong in not reporting the customer's attempt to extort the brokers, Merrill Lynch continues to have the customer."

The panel also approved the brokers' request to have the record of their "separation" expunged from regulatory records, ordering that the reason for their termination be changed to "without cause."

In October 2015, eight months after their termination from Merrill, Reed and Barrionuevo, who are based in Houston, registered with independent brokerage firm Global Investor Services, according to BrokerCheck.

Plaintiffs' lawyers who represent brokers against former employers said the decision could make firms think twice about litigating demands for return of forgivable loans from brokers who leave voluntarily or because they were pushed.

"Firms are a little overconfident in sorting wrongful termination claims from promissory note claims," said Ross Intelisano of Rich, Intelisano & Katz in New York. "They've had such a good experience in winning promissory note cases that if they're not necessarily calculating the risk of cases when the facts aren't good for them."

**Leave a comment below or begin a discussion on the forums.**

---