

REGIONAL NEWS

Merrill Lynch Arbitration Award, Plus Attorney Fees, Stands

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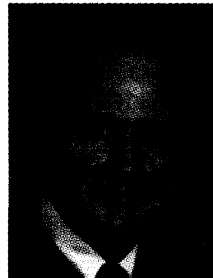
A former employee of Merrill Lynch, Pierce, Fenner & Smith will have to pay the securities brokerage firm over \$200,000, plus interest, now that a federal judge has upheld an arbitration award.

Just over \$80,000 of the total figure—\$234,000—is for attorney fees. James Milnes, the former employee who had been a financial adviser in the company's Philadelphia office, will also have to cover the attorney fees for the company's defense of the arbitration award after Milnes asked the U.S. District Court for the Eastern District of Pennsylvania to vacate it. Those fees are yet to be determined.

U.S. District Judge R. Barclay Surrick of the Eastern District of Pennsylvania ruled that the decision of the arbitration panel should stand, partly because of the highly deferential standard under which district courts are to examine arbitration awards and partly because of a lack of evidence from Milnes that the panel had erred.

"Respondent argues that the panel disregarded the 'manifest legal requirement that an award of attorneys' fees be reasonable,'" Surrick said. "We disagree."

The weight of Milnes' criticism of the arbitration panel's award rested on its award of attorney fees.



SURRICK

from the job in 2008 without having finished paying back the loan, according to the opinion.

The arbitration panel awarded the company \$134,000 in compensatory damages, \$18,000 in accrued interest, and \$82,000 in attorney fees, according to the opinion.

In order to meet the standard to get the district court to vacate the award, a finding that it is "completely irrational," Milnes had argued "that the arbitration panel erred by not making any findings of fact regarding attorneys' fees and by awarding the exact amount requested by petitioner," Surrick said.

The judge explained that, "for an award to be completely irrational, it is not enough that a court find that the arbitrators erred, but rather it must find that their decision indeed escaped the bounds of rationality." Surrick had quoted from a 2008 opinion from the Eastern District of Pennsylvania, *Southco v. Reell Precision Manufacturing*.

In addressing Milnes' argument that the

dispute itself, though, arose from a \$600,000 loan that Milnes got from the company when he started working there in 2002. He was to pay it back with an interest rate of 4.75 percent, but resigned

panel hadn't properly examined the company's attorney fees request, Surrick looked to an opinion issued by the U.S. Court of Appeals for the Fourth Circuit last year.

"The Fourth Circuit Court of Appeals addressed this exact issue in *Wells Fargo Advisors v. Watts*," he said. In that case, the arbitration panel had awarded \$60,500 in attorney fees and the district court vacated the award because the panel hadn't made clear its analysis.

However, the Fourth Circuit reversed the district court, "holding that 'arbitration panels are not required to explain their decisions' and that 'a court must defer to arbitrators' factual findings on attorneys' fees even if the arbitrators do not explain a basis for the precise amount,'" Surrick said, quoting from the *Watts* opinion.

In this case, though, the arbitration panel didn't award the fees as requested by the company. It had asked for \$93,500 and, after assessing the documentation submitted by the company, the panel awarded \$82,000 in attorney fees, according to the opinion.

Milnes had objected to the fees sought by the company before the panel had ruled, arguing "that petitioner's 'request for legal fees was patently unreasonable, including billings by 14 attorneys and paralegals, largely for purposes of conferring amongst each with respect to an arbitration matter that they argued—in both 'opening' and

'closing'—was a 'simple' case,'" Surrick said in a footnote, quoting from documents submitted by Milnes.

The company had responded in its submissions to the court that "'given Milnes' Herculean efforts to divert attention away from his failure to satisfy his contractual obligations to Merrill Lynch, including his last-minute assertions and defenses, Merrill Lynch's request for fees is entirely reasonable and appropriate,'" Surrick said in the footnote. It further argued that "'Milnes' antics required petitioner to incur nearly \$95,000 in fees for more than 500 hours of work."

Surrick held that the panel isn't required to give any further explanation of its decision to award attorney fees and upheld its award.

The judge also granted the company's request for 6 percent interest, to be calculated from the date of the arbitration award, pursuant to the rules of the Financial Industry Regulatory Authority and its request for attorney fees related to Milnes' motion to vacate the award.

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(Copies of the 11-page opinion in Merrill Lynch v. Milnes, PICS No. 14-0524, are available from The Legal Intelligencer. Please call the Pennsylvania Instant Case Service at 800-276-PICS to order or for information.)