BROKER'S WORLD: Brokers Fight Bonus Repayment - And Lose
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NEW YORK (Dow Jones)--Brokers who ask for a break from repaying signing and retention bonuses aren't getting much sympathy from arbitrators. They may get even less if they try to blame their companies for driving them or their clients away.

One recent ruling illustrates the point. It involved a broker for the former Wachovia Securities, LLC, now Wells Fargo Advisers, which claimed he owed $289,762 on a promissory note he signed in 2003.

The broker, Bryant S. Hayward, left Wachovia's Denver office for another brokerage in 2007. He countered the company's claim with one of his own: Bryant asked for $723,282 to compensate him for lost clients and $500,000 for damage to his reputation, according an arbitration ruling from a Financial Industry Regulatory Authority panel.

Hayward, who spoke with Dow Jones Newswires, said he left because of what he alleged were sales practice and securities law violations committed by another broker. He said those actions damaged his business, but his argument didn't fly with the Finra panel. It decided he must pay Wachovia the amount due on the note plus about $40,000 in interest.

The panel also ordered him to pay $50,000 for Wachovia's legal fees, "due to the numerous affirmative defenses raised throughout the course of this arbitration," according to the award dated April 21.

Hayward believes the arbitration system is biased against brokers.

"I really had faith in the system because I had such mounting evidence," he says. A spokeswoman for Wells Fargo Advisers declined to comment.

Signing and retention bonuses are typically secured by a straightforward contract, presented as an advance on future commissions. Brokers agree to pay back the sum over time by signing a promissory note. In many cases, the advance is forgiven over time. But if the broker leaves before the contract expires, he must pay back a pro-rated share.

A slew of brokers have changed shops in the recent market meltdown as brokerages have folded, been bought out or merged. Some left promissory notes unpaid in the process, and Finra is handling a glut of arbitration cases, according to a person familiar with the matter.

Finra recently proposed rule changes to streamline the arbitration process in promissory note cases, and some brokers contend those changes favor the companies. A Finra spokesman said it is dealing with increases in many kinds of claims, and is constantly looking for ways to make procedures more efficient.

Hayward's departure predated the market troubles, but may be a signal for brokers considering digging in their heels in arbitration.

"It's a myth that companies aren't aggressive about enforcing these notes - they are," says Thomas Lewis, a securities attorney with Stark & Stark in Princeton, N.J. Enforcement proceedings, he says, are becoming even more common as brokers move to different companies and cash-strapped brokerages try to grab whatever money they can.

Marc S. Dobin, a securities attorney in Jupiter, Fla. who represents brokers, says many of his current clients voluntarily left their brokerages because of recent "horrific public relations" that they say scared away clients.

Those who don't pay back the notes face problems. An industry protocol observed by many brokerages prohibits a broker who leaves his job from soliciting clients until the note is paid. Finra can begin suspension proceedings against brokers who don't pay notes within 30 days of an arbitration award.

Brokers can try to keep their licenses by arguing economic hardship, but they must prove their circumstances before an arbitration panel.

Timothy Will, an attorney in Torrance, Calif., who represented a Wachovia manager and broker whom Hayward also named in his counterclaim, declined to comment on the case. But he said that, generally, brokerages prevail in promissory note arbitrations.

Panels, he said, usually frown upon counterclaims that blame employers for declining business. "It's very rare that the argument works," he says.

Finra arbitration panels also recently decided in favor of Stifel Nicholas & Co. and Morgan Stanley & Co. in claims seeking repayment of promissory notes from brokers, according to awards posted on Finra's Web site.

(Suzanne Barlyn writes Compliance Watch, a column that focuses on compliance and regulatory issues affecting financial advisers. She can be reached at 201-938-4546 or by email at suzanne.barlyn@dowjones.com)

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