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Financial Services Labor and Employment Advisory: Broker Raiding Costs Financial Services Firm $12.1 Million

In 2007, Wachovia Securities accused Raymond James Financial, Inc. of illegally raiding employees from four branch offices of A.G. Edwards & Sons following Wachovia's announcement that it was buying the company. Illustrating that employee poaching can be an expensive endeavor, on January 29, 2010, an arbitration panel directed Raymond James to pay Wells Fargo Advisors LLC, the successor to Wachovia, more than $12 million in compensatory damages, attorney's fees and litigation costs.

The allegations and the defense

Of the 20 employees allegedly lured away from A.G. Edwards, four financial advisers were named as respondents in the arbitration, along with Raymond James. However, the four, all of whom left A.G. Edwards and took positions with Raymond James in the summer of 2007, were not held liable for any portion of the damages awarded to Wells Fargo.

The Financial Industry Regulatory Authority (FINRA) arbitrators did not explain the precise legal basis for the award. However, Wachovia/ Wells Fargo's specific raiding allegations against Raymond James and the four named individuals were set forth in the Award and Dispute Resolution Notice. The charges included:

- Breach of fiduciary duty
- Tortious inducement to cause the breach of fiduciary duties
- Tortious interference with actual and prospective business relationships
- Negligent interference with actual and prospective economic advantages
- Raiding/unfair competition
- Misappropriation of trade secrets
- Civil conspiracy
- Breach of contract
- Inducement to breach contract.

In response to these allegations, Raymond James argued, among other things, that the financial advisers at the center of the dispute – employed at A.G. Edwards branch offices in Indiana, Illinois and Arkansas – were exploring "affiliation alternatives at that time, in response to the takeover of A.G. Edwards by Wachovia," and therefore any actions taken by Raymond James were not the cause of the business losses Wachovia claimed it had suffered.

The decision and the parties' response

Apparently unconvinced by this argument, the arbitrators granted Wachovia's successor, Wells Fargo, almost the full award the company had requested, including $10.5 million in compensatory damages and $1.5 million in attorney's fees. The brokers and branches involved in the case reportedly had $5.94 million in annual revenue with assets of $853 million.

Following the announcement of the award, a Wells Fargo spokesperson asserted that the arbitrators "clearly recognized the distinction between legitimate, permissible recruiting conduct versus raiding." On the other side, a spokesperson for Raymond James accused the arbitrators of failing to consider the "unique circumstances surrounding Wachovia's acquisition of A.G. Edwards and the resulting desire of the A.G. Edwards' advisers to seek employment elsewhere." The spokesperson further stated that Raymond James is reviewing its options, but acknowledged that it is difficult to get an arbitration award vacated.

Raiding claims can be difficult to prove

Notwithstanding Wells Fargo's victory in this case, employee raiding claims can be tricky to establish. There is no one factor that easily proves or disproves such a claim. Courts and arbitrators typically consider a variety of factors, including the extent of the alleged raiding and resulting harm in relation to the overall size of the firm or particular branch office in dispute.

In fact, Wachovia's – and now Wells Fargo's – experience with employee raiding claims graphically illustrates how difficult they can be to prove. Following its takeover of A.G. Edwards, Wachovia accused other firms, in addition to Raymond James, of improper raiding. The results have been mixed. Some of those cases are still pending, but in one recent case involving the St. Louis-based brokerage Stifel Nicolaus Corp., a FINRA arbitration panel not only rejected Wachovia/Wells Fargo's raiding claims against Stifel Nicolaus and a number of former A.G. Edwards brokers, but ordered the company to pay $15,080 in damages to the brokers, $73,350 in hearing fees and $1.1 million in attorneys' fees.

Employee raiding and the "Protocol for Broker Recruiting"

As a result of the highly competitive nature of the financial services industry, securities firms long found themselves embroiled in disputes with other firms and departing brokers over such issues as misappropriation of trade secrets and unauthorized disclosure of confidential information. In an effort to reduce the amount of litigation over such issues, in 2004, three financial institutions drafted and signed onto an agreement known as the Protocol for Broker Recruiting. The Protocol reportedly now has more than 370 signatories.

Under the Protocol, financial institutions who sign on agree that, if a financial advisor leaves one signatory or financial institution to join another signatory institution, the latter will have no monetary liability to the former if the departed financial advisor follows the terms of the Protocol. Specifically, the Protocol permits a departing financial advisor to take his or her client information, including the address, telephone number, email address, and account title of their prior customers. They can also begin immediately to solicit their clients when they join a new firm as long as they do not do so before leaving.

Notably, however, **the Protocol does not protect a signatory firm from liability for engaging in employee raiding**. Thus, as the Wachovia-Raymond James dispute highlights, securities firms continue to battle over this issue.

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