

Bank's issues with acquisition linger

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A Sarasota attorney won a major battle in what's now a four-year deferred compensation dispute between Bank of America and brokers with Merrill Lynch, which BofA bought for \$50 billion in 2008.

Moreover, the bank and Merrill Lynch received a scathing rebuke in the case from a Financial Industry Regulatory Authority panel. The panel wrote that Merrill Lynch, "directly and indirectly through senior management ... intentionally, willfully and deliberately engaged in a systematic and systemic fraudulent scheme to deprive" brokers of deferred compensation. The decision, an arbitration award, was handed down April 3.

The FINRA panel ruled that Merrill Lynch, through BofA, must pay two West Palm Beach brokers \$10.2 million in punitive damages. "I think it was a well-reasoned decision by a seasoned group of arbitrators," says Sarasota attorney Michael Taaffe, who represented the brokers.

Bank of America has indicated it will likely appeal the ruling.

Taaffe, a business litigation attorney with Sarasota-based Shumaker, Loop & Kendrick who specializes in disputes between firms and departed brokers, has essentially built a small side practice with the Merrill Lynch cases. Taaffe, along with fellow Shumaker attorneys Michael Bressan and Jarrod Malone, represent a contingent of at least 40 former Merrill Lynch brokers who claim they were denied deferred compensation. About 15 of those brokers worked on the Gulf Coast.

The gist of the case, says Taaffe, hinges on a clause in Merrill Lynch brokers' contracts called "good reason." Before the BofA sale, brokers who left Merrill to work for competing firms weren't entitled to equity compensation plans in which they were vested. But anyone who left for a good reason — say a sale to a behemoth bank with a vastly opposite corporate culture — should still receive his Merrill Lynch stock and awards, Taaffe contends.

The cases are being heard by FINRA, which oversees more than 4,500 brokerage firms nationwide. Taaffe won a \$1.67 million decision in a similar case before FINRA in 2010.