

NEWS Regulation

Court's \$6 million Credit Suisse award could bolster clawbacks

Arbitration lawyer says decision sends signal to 'Wall Street bullies'; Credit Suisse points to wins in other cases



July 23, 2020 *By Mark Schoeff Jr.*

A recent court decision affirming a more than \$6 million arbitration award for former Credit Suisse Securities brokers in a deferred compensation case could embolden other financial advisers who leave money on the table when switching firms, an arbitration lawyer said.

In [a July 17 opinion](#), New York Supreme Court Judge Andrea Masley [upheld the May 2019 decision](#) by a Financial Industry Regulatory Authority Inc. arbitration panel that ordered Credit Suisse to pay \$6.4 million to Joseph T. Lerner and Anna Sarai Winderbaum, who left the firm when it shut down its brokerage operation in 2015.

Lerner and Winderbaum moved to Morgan Stanley, even though Credit Suisse had an [exclusive arrangement with Wells Fargo](#) to recruit its registered representatives. Lerner and Winderbaum claimed that Credit Suisse withheld compensation owed to them when they went elsewhere.

Credit Suisse criticized the New York court's ruling.

"We believe the decision is wrong," a Credit Suisse spokesperson said. "It ignores settled principles of law and the facts in the case."

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The brokers' win is a positive sign for other financial professionals considering compensation and other employment claims against brokerages, said Peter Mougey, a shareholder at the law firm Levin Papantonio.

"These kinds of awards that have been obtained by talented plaintiffs' attorneys should send a signal to advisers that they shouldn't be muscled around by Wall Street bullies," Mougey said. "The trend is moving in favor of financial advisers bringing claims."

Barry Lax, the attorney representing Lerner and Winderbaum, said the New York court's decision to uphold "liquidated damages" shows Credit Suisse didn't pay Lerner and Winderbaum the money it owed them. That's a good harbinger for other former Credit Suisse brokers he's representing.

"There's nothing better than that for the pending cases," said Lax, a partner at Lax & Neville. "It's more confirmation of what we knew all along."

Credit Suisse [lost a separate deferred compensation arbitration case](#) in February.

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But the firm says a more recent Finra arbitrator case that it won shows it's on solid ground in opposing deferred compensation payments to former brokers.

Three former Credit Suisse brokers sought \$15 million in damages and "any and all deferred compensation" because they said the brokerage hired them in 2015 without indicating it would soon close its brokerage business.

In [a June 2 decision](#), Finra arbitrators denied the claims and ordered the former brokers to pay Credit Suisse \$3.5 million in outstanding promissory note balances.

The Credit Suisse spokesperson also pointed to the firm's [victory over UBS in a 2015](#) dispute over UBS' hiring of Credit Suisse staff from its brokerage business.

"The only Finra panel to have broadly considered the circumstances under which 100 [brokers] left Credit Suisse in the fall of 2015 correctly found that those [advisers] were induced to resign as part of an unlawful raid orchestrated by UBS," the Credit Suisse spokesperson said. "The UBS decision was completely in Credit Suisse's favor and awarded Credit Suisse \$9 million in damages."

But Lax said the legal losses piling up for Credit Suisse illustrate it is in the wrong when it comes to deferred compensation claims. He points to rulings in favor of his clients by Finra arbitrators [as well as an appellate court](#) and the New York Supreme Court.

"I'd say that's a pretty unanimous position," he said.

The New York court's decision was another example of a court siding with Finra arbitrators and [denying a firm's motion to vacate an award](#).

"Credit Suisse doesn't get a proverbial second bite at the apple on some kind of technical defense," Mougey said.