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Credit Suisse Can't Ax Adviser's $1.3M Deferred Comp. Win

By **Grace Elletson**

Law360 (November 16, 2023, 8:57 PM EST) -- A New York federal judge backed a $1.3 million arbitration award Thursday granted to a former Credit Suisse adviser who said he was stiffed on a deferred compensation package after the investment banking company shuttered one of its units, ruling the arbitration panel didn't overstep its authority.

U.S. District Judge Katherine Polk Failla **declined to vacate** the $1.3 million award handed to James D. Garrity after a Financial Industry Regulatory Authority arbitration panel found he was unfairly denied a deferred compensation package when Credit Suisse Securities USA LLC closed its private banking unit. Judge Failla knocked down the company's arguments that the panel overstepped its authority by finding that Garrity's claims were timely and by handing him a financial award that went beyond his contract.

"As detailed in the remainder of this opinion, neither of these arguments prevails in the face of the court's duty to confirm arbitration awards in all but the narrowest circumstances," the judge said.

The company found Garrity voluntarily resigned in 2015 and was therefore ineligible for unvested shares and cash awards through his deferred compensation package, when he declined to take a cash incentive equal to the package to transfer his employment to Wells Fargo when Credit Suisse shuttered its private banking unit. Instead, Garrity resigned and chose to take a job with Morgan Stanley, according to Thursday's order.

But Garrity said the company unfairly canceled his deferred compensation package after he was involuntarily discharged. He pursued arbitration in 2020, where a FINRA panel ultimately found in February he was owed $1.3 million, Judge Failla said.

In its bid to vacate the award, Credit Suisse said the panel exceeded its authority and disregarded the law when it declined to toss Garrity's untimely claims. He filed his claims five years after he was denied his deferred compensation, outside the statute of limitations for the District of Columbia, Maryland and New York, and limits set by his arbitration agreement, the financial institution said.

But the panel twice considered and twice denied Credit Suisse's arguments that Garrity's claims were untimely, the judge said, and there's no evidence that the panel disregarded the law. It properly applied the time limitation clause in Garrity's arbitration agreement to the facts at hand, Judge Failla said, therefore no overstepping occurred.

Credit Suisse also said that the panel didn't instruct the company to modify its Form U-5 — a notice financial institutions must file when someone who issues securities leaves his or her job — to dictate that Garrity did not leave his job voluntarily. Therefore, the panel must have found Garrity resigned — a ruling that contradicts its finding he is owed deferred compensation, Credit Suisse argued.

The company also argued that the panel disregarded the contract Garrity held with Credit Suisse and based its findings on its "own personal view of 'fairness.'" The company said that the panel awarded Garrity essentially the same amount of money Credit Suisse offered him as incentive to join Wells Fargo before he elected to take a job elsewhere, and because he declined that offer, he's not owed that compensation.

But Judge Failla said that nothing in the parties' arbitration agreement required Credit Suisse to modify the Form U-5 in order for Garrity to receive monetary damages. And just because the panel's award "mimicked" the amount offered by Credit Suisse as an incentive to join Wells Fargo doesn't mean that the compensation should be tossed, she said.

"Petitioner submitted ample evidence in support of his damages claim to justify the panel's award, including testimony on industry standards, practices for compensation, and a detailed valuation calculation based on the value of the petitioner's cancelled deferred shares," Judge Failla said.

A Credit Suisse spokesperson told Law360 that the company is disappointed the court did not reduce the arbitration award in Garrity's case, an outcome they said the company has secured in similar deferred compensation challenges it called "double dip matters."

Barry Richard Lax, who represents Garrity, told Law360 he is "very satisfied with the decision but not surprised" given that his firm has also secured wins in other deferred compensation cases against Credit Suisse.

Garrity is represented by Barry Richard Lax of Lax & Neville LLP.

Credit Suisse is represented by Kenneth John Kelly and Scott James Splittgerber of Epstein Becker & Green.

The case is Garrity v. Credit Suisse Securities (USA) LLC, case number 1:23-cv-01457, in the U.S. District Court for the Southern District of New York.

--Editing by Nick Petruncio.