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Judge's Rejection Of Merrill's Restraining Order Request Greenlights \$129B Breakaway Launch

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A federal judge on Tuesday denied Merrill Lynch's request for a temporary restraining order against a top-ranked team of advisors in Atlanta overseeing \$129 billion in assets who broke away to launch their own RIA firm last week.

The from-the-bench ruling also put the kibosh on Merrill Lynch's hope for an expedited hearing before the Financial Industry Regulatory Authority, which requires an approved restraining order request to whittle down the wait for a hearing to two weeks.

The statement of claim will now move at Finra's normal speed, typically a year to 18 months. Merrill Lynch filed the order against the breakaway of most of the Global Corporate & Institutional Advisory Services team, which provides equity compensation services, retirement benefit plans and institutional consulting to ultra-wealthy clients, a team now operating under the name OpenArc Corporate Advisors. The team was helped by Dynasty Financial Partners, its financial partner, and Charles Schwab & Co., who is the team's new custodian. Both those firms were named as defendants in Merrill's complaint.

"This was a significant victory for the team, Dynasty and Schwab. Merrill made a lot of assumptions, but they had no evidence to show that any contracts were breached, that there was any pre-termination solicitation of clients," said attorney Barry Lax, of New York's Lax, Neville & Intelisano. "The court is not a rubber stamp for large wirehouses to get [temporary restraining orders] granted so they can run to arbitration and get a 15-day hearing. When you have no evidence, you cannot get a TRO."

Lax represented Dynasty Financial Partners, which put in \$90 million to bankroll the OpenArc business in exchange for an equity stake, according to the Merrill Lynch complaint.

"The injunction hearing is only the first step in the litigation process," a Merrill Lynch statement said. "We look forward to vigorously pursuing this matter in arbitration and are confident that a Finra panel will agree that the defendants engaged in a corporate raid and conspired to poach our employees and clients."

Lax said the judge, Victoria Calvert, addressed two allegations in particular during her ruling. First, Merrill Lynch had alleged that OpenArc was not a signatory member of the "Broker Protocol"—an agreement that says wirehouse firms allow advisors to switch firms with limited litigation under certain conditions—until after the advisors resigned, and that meant protocol protections would not apply to their departure. The court found that OpenArc was simply a new name for a firm called 1330 Advisors and that it had become signatory to the protocol in August 2024.

Merrill Lynch also alleged one of the advisors named had not formally resigned before he started soliciting clients, Lax said. "He was on a cruise, and he couldn't sign his resignation letter," Lax said. "But he was always part of the group. He was always leaving. He left with everybody else."

'Strong-Arm Tactics'

Merrill, in its filing on September 23, the same day the advisors resigned, claimed that the advisors used "strong-arm tactics" to conspire and poach its Global Corporate & Institutional Advisory Services business. "Upon information and belief, the individual defendants and the corporate defendants have been collaborating to divert the GCIAS business from Merrill and open a Dynasty and Schwab-affiliated registered investment advisor," the lawsuit said.

"Defendants already have forced Merrill to expend significant resources to combat their unfair and unlawful conduct. They have willfully violated contractual obligations and federal and state laws for the purpose of depriving Merrill of the value of its substantial investments in its proprietary information and employees, thereby harming Merrill."

The advisors, Dynasty and Schwab fought back in separate court filings, arguing that Merrill's claims had no merit and requested that the court throw out the firm's restraining order request.

The advisors claimed that when Merrill learned of their impending departure, the firm, "devised a plan to unfairly compete, deliberately harm their reputations and drag them through the mud in the press."

And as for the allegation of "corporate raid," the advisors said that's not the case. "Merrill cannot show raiding occurred as it was one team that left to form its own business," they said. "Generally, raiding is understood as a claim against a recruiting firm."

They argued that they were forced to start their own business because Merrill has failed to "meaningfully" invest in the business division where they worked. "The division's technology and platform became so outdated due to Merrill's failure to invest that it went from industry leader to laggard in the past five years," the filing said.

The advisors also said they attempted to engage with Merrill to discuss the future of the business but "were instead placed on administrative leave without cause or warning and outrageously instructed to not contact their clients or fellow employees." At that moment, they immediately resigned, the filing said.

Merrill accused the team of breaching the broker protocol by acting in bad faith. The firm also accused Dynasty of violating the agreement.

But the advisors argued that they followed procedure, and that the protocol permits advisors to retain certain client contact information when they leave if both firms are signatories, as they said both OpenArc and Merrill are.

Furthermore, they pointed out that they owned the business and under a previous arrangement had paid \$22.5 million to previous Merrill Lynch partners for the right to be able to solicit and move clients under the protocol. The unit of 170 employees, some of whom had worked there for 30 years, had managed \$129 billion in assets, with roughly \$100 million in pension plans and \$29 billion in ultra-high-net-worth accounts.

Dynasty's Role

In its complaint, Merrill accused Dynasty of encouraging the advisors "to take Merrill's customer information and provide it to Dynasty before they resigned from Merrill. Upon information and belief, once Dynasty received Merrill's customer information, Dynasty shared it with Schwab, which is not a signatory to the protocol and has no right to access Merrill's confidential information," the filing said.

The St. Petersburg, Fla.-based Dynasty, which assists financial advisor teams to leave national brokerage firms to open their own businesses, last week told *Financial Advisor* that it takes the broker protocol very seriously. "We are also strong advocates for advisor and client choice and believe that leadership by fear is not a long-term strategy on how to retain the best advisors and serve their clients over time."

Dynasty CEO Shirl Penney calls yesterday's court decision "a watershed moment" for the wealth management industry. "It acknowledges the strength and sophistication of the independent movement. We will always stand for and advocate for client and advisor choice, which is at the core of what the independent movement is all about."

Public interest in the outcome of this hearing has been spurred on by the sheer size of the breakaway, Lax said, and now wirehouses are on notice that their biggest teams have an inspirational example of how it can be successfully accomplished.

"Some of the biggest wirehouses are members of the protocol, and they have to realize that if they've got a team of 50 people, or 75 people, or 100 people, they're vulnerable to those people leaving. If they're protocol members, it's one team, and they could just do what these guys did and leave," he said. "I also think it's refreshing for the independent channel when a firm like Dynasty, or another firm like them, can facilitate the process for folks that were lifelong wirehouse advisors to start their own business. That's a big step."

Lax also said it's critical that, no matter what the scale of the departure, the advisors play by the rules.

"Merrill had a couple weeks, maybe two and a half weeks, and they, I am sure, did a forensic of every single advisor's email,

every printer. I'm sure they did everything they could to come up with something. And they, as the Merrill Lynch lawyer admitted, didn't have any evidence of any wrongdoing," Lax said. "So if a group or a team is thinking about this kind of move, they've got to get a lawyer to get counsel, and they have to make sure that they're doing everything they're supposed to be doing for their current employer, while they get ready to go into business for themselves."

In a comment to *Financial Advisor* magazine, Schwab said, "As we said in our filing, the allegations against Schwab were not facts but rather unfounded speculation. We are pleased that the court agreed. We hold ourselves to the highest standards of integrity, and our business practices are rooted in respect for individual choice and fair competition. And our unwavering commitment to our clients is our guiding priority."

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