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Financial Services Employment Blog

No Double Dipping: Court Rejects Lehman Traders' Claims for Additional Comp

By Cliff Fonstein and Meredith-Anne Berger

On July 6, 2016, Judge Schofield of the Southern District of New York, on appeal from the Bankruptcy Court, rejected the claims of two former proprietary traders at Lehman Brothers that they were entitled to additional money for their 2008 bonuses. In denying the traders' claims, Judge Schofield scrupulously stuck to the language and intent of the traders' compensation agreements.

Lehman filed for bankruptcy in September 2008 and, thereafter, Barclays entered into an asset purchase agreement ("APA") to acquire Lehman's North American capital markets and investment banking assets. Barclays made offers to hire some of the Lehman employees and pursuant to the APA, Barclays agreed to pay the entirety of each transferred employee's bonus for the 2008 compensation year. The two traders at issue in Judge Schofield's decision were hired by Barclays and covered by the APA.

The first trader, Jonathan Hoffman, claims that he was owed $83 million. Hoffman's 2007 and 2008 compensation agreements with Lehman provided an annual bonus based on a formula set forth in his employment agreement tied to trading performance. The bonuses were to be paid in installments, with a portion to be withheld until the next fiscal year. At the time of the bankruptcy, Hoffman was owed approximately $7 million in cash as the second installment of his 2007 bonus, and over $75 million for 2008, totaling over $83 million at the time Barclays signed the APA.

Hoffman negotiated extensively with Barclays over the $83 million, and secretly recorded his conversations with Barclays officials about the compensation, during which an executive acknowledged "I hear you on the comp. And I think if we were to move forward we're going to have to figure something out, because we want you motivated." Barclays ultimately paid the $83 million he was owed by Lehman. Barclays structured the compensation as a "special award," to be paid over time, in addition to his regular compensation package from Barclays for his future work for the company. However, Hoffman claimed the $83 million paid by Barclays was a "signing bonus" to motivate him, rather than the compensation he was owed by Lehman.

With respect to Hoffman's claim, the court tersely concluded he was "precluded from seeking a double recovery" from Lehman's estate. The court applied a common-sense approach, in light of the prior $83 million payment and the recordings of his conversations with Barclays executives. The court found that he negotiated a special compensation package, including his entire bonus owed by Lehman, upon joining Barclays. The court noted it "strains credulity" to argue that the $83 million Barclays paid to Hoffman was a "mere signing bonus or motivational tool, and that the amount only coincidentally matched the amount that Hoffman was owed by [Lehman]."

The second trader, Wayne Judkins, claimed that he was owed $800,000. Like many Wall Street employees, and unlike Hoffman, Judkins' agreement was non-formulaic and contained a discretionary component. His agreement established a minimum bonus amount of $800,000, but said that anything beyond that was discretionary and must be in writing. The court rejected Judkins' claim that he deserved more than $800,000, noting the purported "unspecified additional performance bonus" orally promised to Judkins is meaningless under Lehman's bonus policy which required a written agreement for any additional compensation, and on which Judkins' agreement was silent.

In this decision, the Southern District has once again affirmed its intent to uphold written agreements, including discretionary bonus language, and continues to shut out claims for bonuses made in contravention to those agreements.

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