

Deferred Pay Battle Heats Up As Ex-Merrill Advisors Lob Fresh Claims

The advisors' complaint says Merrill wrongly withheld their deferred compensation in violation of a federal retirement law.



By [Andrew Welsch](#)
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When financial advisors switch employers, they can leave behind hefty sums in the form of deferred compensation, which their former employers consider they forfeited when they changed companies. Now, advisors are increasingly demanding—via the public courts and private arbitration—their deferred comp back. It's shaping up to be a costly battle for the brokerage firms.



Merrill Lynch
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The most recent legal action puts Merrill Lynch in the hot seat. A group of former Merrill financial advisors filed claims in Finra arbitration on Thursday accusing Merrill of wrongly withholding their deferred compensation. The claimants—John Meyer, Kevin Rotolo, Blake Brignac, and Timothy Woods—left Merrill to join rival wealth management company [Raymond James Financial](#) in 2022.

"Merrill Lynch took millions of dollars my clients earned in commissions and locked them up in a deferred compensation plan containing a trapdoor," Rogge Dunn, the lawyer representing the advisors at Dallas-based law firm Rogge Dunn Group, said in a statement.

A Merrill Lynch spokesman described their case as a "copycat" claim and said the company is confident that its deferred compensation plan, known as WealthChoice, "is not covered under Erisa and that our compensation program complies with all relevant laws."

It's common practice at national brokerage firms to pay advisors in a combination of cash and deferred compensation based on how much revenue they generate for the company. The advisors' arbitration complaint says about 4% to 7% of advisors' cash compensation was put in Merrill's deferred comp plan and vested at a later date.

Like other such cases that have been filed against other large brokerage firms, the advisors' complaint says that Merrill's deferred compensation plan is governed by a 1974 retirement law known as Erisa, which governs retirement and other benefit plans. Withholding deferred compensation is a violation of Erisa as well as Louisiana state law, according to the advisors' complaint.

"Under Erisa law, deferred comp plans are designed for wealth building and retirement; these plans should not be used as golden handcuffs to discourage financial advisors from moving to other firms when it's in their clients' interest to move," Rogge said.

Meyer, Rotolo, Brignac, and Woods are seeking the return of their deferred compensation, plus attorney's fees and other costs. "This is not a case of Merrill Lynch withholding payments or bonuses that a supervisor decided to pay an employee on a totally subjective and discretionary basis," their complaint filed in Finra arbitration states. "These were not voluntary contributions. They were mandatory conversions from a formulaic commission structure required by Merrill Lynch's deferred compensation plan."

Their complaint also states that because Merrill has been keeping departing advisors deferred compensation for years, it has pocketed hundreds of millions of dollars, "possibly" more than a billion.

Brewing legal battles. Dozens of advisor teams and solo advisors have been filing legal claims seeking deferred compensation they said was wrongly withheld, sometimes with mixed results.

Merrill is also defending itself from a lawsuit [brought by advisor Kelly Milligan in federal court](#) in North Carolina on April 30. Milligan's lawsuit, which is seeking class action status, says he was unfairly forced to forfeit more than \$500,000 in deferred compensation when he left the company in 2021. His lawsuit is seeking damages on behalf of himself and other former Merrill advisors. The company has denied the claims.

"The [deferred comp] plan has nothing to do with retirement savings or deferring earned income, but rather is designed to reward active employees for continuing to work and improve performance," the company said in a Sept. 30 court filing. "This lawsuit is no more than an opportunistic attempt to capitalize on an implausible interpretation of Erisa that would stretch the statute far beyond what Congress intended when seeking to protect vested retirement benefits."

Merrill Lynch isn't alone. [Morgan Stanley](#)

is also defending itself against advisors deferred comp claims in dozens of arbitration cases. The company successfully forced a group of advisors pursuing a class action case in federal court to take their claims to private arbitration instead. But the federal judge who ruled in favor of the company on that request, in the same decision, also found that Morgan Stanley's deferred compensation plan is in fact governed by Erisa.

Morgan Stanley requested the judge reconsider his decision, saying that it put it at a disadvantage and was "wreaking havoc" [in dozens of arbitration cases where the company was defending itself](#). Earlier this month, [the judge denied the request](#).

Morgan Stanley has lost a couple of deferred comp arbitration cases. For example, in May a Dallas-based arbitration panel ordered the company to pay nearly \$1 million to two advisors, Jeff Davis and William Swisher, who accused Morgan Stanley of wrongly withholding their deferred compensation after they left to work for a competitor.

Dunn, who has won other deferred comp cases in arbitration, praised the judge's decision and said more financial advisors are filing arbitration claims to recover their deferred compensation.

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