

Ex-Wells Fargo Adviser Loses 3rd Circ. Fight On \$1.6M Award

By **Matthew Santoni**

Law360 (May 9, 2022, 4:28 PM EDT) -- The Third Circuit on Monday declined to throw out a \$1.6 million Financial Industry Regulatory Authority arbitration award that Wells Fargo Advisors LLC won from a former employee, rejecting the ex-advisor's arguments that making him repay loans secured by his bonuses went against public policy.

The unanimous panel said that Christopher N. Caputo failed to show that the FINRA award in his former employer's favor violated public policy against allegedly illegal employment contracts, had been in manifest disregard of the law, or had improperly excluded evidence in his favor.

"Caputo asserts that enforcing the contractual provisions at issue would violate state labor laws," Judge Julio M. Fuentes wrote for the panel. "Even if these laws articulated some public policy, it would not be 'well defined or dominant.' Caputo identifies no other explicit public policy that the arbitration award violates."

Although the Third Circuit upheld a district court ruling that had refused to vacate the award, Caputo had filed for Chapter 7 bankruptcy in October 2020 and the bankruptcy court had discharged the debt. Wells Fargo argued that made the appeal moot, but the Third Circuit said a ruling would also affect whether Caputo could reclaim money that remained in his Wells Fargo brokerage accounts, so the issue was not entirely settled by the bankruptcy court.

While working for Wells Fargo, Caputo had been qualified to receive a "transitional bonus" of more than \$1.2 million and other awards of about \$240,000 each, the opinion noted.

Those awards were supposed to be paid out in monthly installments over a decade, but Caputo took an option that let him get the money upfront as a loan, which would be repaid by those installments.

But when Caputo was terminated in December 2014, Wells Fargo demanded immediate repayment in full as allowed by the loan agreement. Caputo did not pay, so Wells Fargo took him to FINRA arbitration. That arbitration eventually went in Wells Fargo's favor, and the District Court of New Jersey refused to vacate the award.

On appeal to the Third Circuit, **Caputo argued** that Wells Fargo's efforts to "claw back" commission-based bonuses went against New Jersey state law, but the Third Circuit said that his public-policy argument was not among the potential reasons listed in the Federal Arbitration Act for reversing an arbitration award. Nor was his argument that the award ignored state labor law.

"Even if the FINRA arbitration panel got it wrong, it is hard to see how this would be more than legal error, as required to vacate an arbitration award under the manifest disregard doctrine," Judge Fuentes wrote. "Further, despite Caputo's assertions to the contrary, there is no evidence in the record that Wells Fargo urged the FINRA arbitration panel to disregard the law. The arbitrators' decisions to cut off the cross-examination of certain witnesses and rule in favor of Wells Fargo do not support the inference that the FINRA arbitration panel disregarded the law such that they exceeded their authority."

Caputo had also argued that the arbitration panel had improperly barred him from presenting evidence that he was terminated without cause, but the Third Circuit said the reason for his termination did not matter.

"Given that Caputo was an at-will employee who signed promissory notes promising that he would pay Wells Fargo back in full, we are skeptical that excluding the evidence at issue resulted in an unfair hearing," Judge Fuentes wrote.

Counsel for Wells Fargo and Caputo did not immediately respond to requests for comment Monday.

Chief Judge Michael A. Chagares and Judges Stephanos Bibas and Julio M. Fuentes sat on the panel for the Third Circuit.

Caputo is represented by Timothy W. Bergin of Potomac Law Group LLC and Mark Kriegel of the Law Office of Mark A. Kriegel LLC.

Wells Fargo is represented by Megan M. Christensen, Yio Kyung Lee and Jonathan A. Scobie of Stevens & Lee.

The case is Caputo v. Wells Fargo Advisors LLC, case number 20-3059, in the United States Court of Appeals for the Third Circuit.

-- Additional reporting by Jeannie O'Sullivan. Editing by Patrick Reagan.