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Financial Services Employment Blog

Senior Financial Advisor "Terminated Without Just Cause" Awarded $985,000 by FINRA Arbitration Panel

By Caitlyn Crisp

Elizabeth Dale Stancil was a top performing senior financial advisor and 13-year employee of First Citizens Investor Services, a subsidiary of First Citizens Bank, in Smithfield, North Carolina. She generated over $1 million in revenue and managed over $120 million in assets for 1,100 customers. She was terminated in March of 2014 for making unauthorized bonus payments to her two sales assistants totaling $9,000 by personal check or cash.

In her Statement of Claim, Stancil alleged wrongful termination and defamation. Stancil claimed that her manager told her that other financial advisors had paid bonuses to their sales assistants either through the bank's payroll system or directly. After Stancil's termination, First Citizens filed a Form U-5 stating that she violated the Bank's Code of Ethics and FINRA Rules.

First Citizens denied that Stancil received approval for paying the bonuses directly to her assistants and asserted that she paid the assistants "under-the-table" to avoid tax deductions. First Citizens presented evidence that its Code of Ethics prohibits employees from making cash gifts and requires employees to keep accurate compensation records. First Citizens also argued that because one her assistants was not a registered financial advisor, Stancil broke FINRA rules prohibiting the payment of bonuses to unregistered individuals. The NASD (the predecessor to FINRA) Notice to Member 00-50, which was released in 2000, provides a "Reminder of Restrictions On Use of Unregistered Persons" and states "the payment of performance bonuses or other forms of incentive compensation, such as through participation in a member's profit sharing plan, are permitted so long as such bonuses or incentives are not tied to transactions, commission activity, or referrals generated by the unregistered person." Stancil argued that the bonuses she paid to her assistants were not tied to transactions or commissions. Stancil also contended that neither the Bank's Code of Ethics nor its compliance manuals prohibited financial advisors from paying bonuses directly to their assistants. Stancil asserted that no FINRA rules were broken and that after an investigation, FINRA declined to take any action against her.

Stancil was hired by Wells Fargo Advisors almost immediately after she was terminated, but her registration was suspended for a month by the North Carolina Securities Division, which delayed the transfer of Stancil's clients' accounts. Stancil claimed that as a result of her wrongful termination, her income dropped from $334,000 to $67,000 and her production fell from over $1,000,000 to $207,000. Stancil requested $15.8 million in compensatory damages.

In the unanimous 3-0 award, the Arbitration Panel ruled that First Citizens was liable to Stancil for $985,000 in damages. The Arbitration Panel also recommended that the Form U-5 be amended to state that Stancil was "terminated without just cause." It appears that the Arbitration Panel believed Stancil's version of events that she had received approval to pay the bonuses directly to her assistants. It's not uncommon for broker-dealers to prohibit sharing compensation unless the relationship is approved.

Broker-dealers should also be aware of FINRA Rule 2040 which addresses "Payments to Unregistered Persons." This rule went into effect on August 24, 2015, after Stancil's termination, so it was not considered by the Arbitration Panel in this case. Rule 2040 provides: "No member or associated person shall, directly or indirectly, pay any compensation, fees, concessions, discounts, commissions or other allowances to: (1) any person that is not registered as a broker-dealer under Section 15(a) of the Exchange Act but, by reason of receipt of any such payments and the activities related thereto, is required to be so registered under applicable federal securities laws and SEA rules and regulations; or (2) any appropriately registered associated person unless such payment complies with all applicable federal securities laws, FINRA rules and SEA rules and regulations."

Sources:

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