

Citi Files Motion To Dismiss In Bonus Pay Class Action

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On Monday, Citigroup filed a motion to dismiss a class action lawsuit filed against the firm over the terms of its financial advisor bonus pay agreements. The firm filed the motion with the U.S. District Court for the Southern District of New York.

The original lawsuit was brought on behalf of 6 former Citigroup brokers who allege that the payback terms on their upfront bonuses violate contract law, and that they do not owe the firm any money. Lawyers for the brokers argued that clauses in their employment contracts are unfair and one-sided that no reasonable or informed person would agree to them. In addition, they said, broker employment contracts that contain such clauses are themselves “illusory,” or unenforceable under contract law.

In its motion, Citi argues that the brokers have litigated this issue before with FINRA and lost. Having chosen to litigate it before FINRA, Citi says the brokers have waived any right to have the court decide the issue.

Thomas B. Lewis, a partner at Stark & Stark, says there’s “a good chance” the court will dismiss the complaint filed by the brokers and rule that FINRA already made a decision on the case. He says it could take two to six months for a judge to write a decision. “Realistically it’s an issue that’s subject to FINRA’s jurisdiction,” he says. “The plaintiffs tried to get out of the FINRA arbitration by getting class action status for the case. But courts are reluctant to get involved if there is FINRA jurisdiction.”

But if the court decides that class action status for the case is legitimate, Citi has other arguments. For one, Citi says the plaintiffs received over \$1.4 million in upfront loans, and each signed a promissory note agreeing to immediately repay the balance on the loans. This makes the brokers’ claims baseless and they should be dismissed by the court, the Citi filing says. “Specifically, Plaintiffs’ allegation that the promissory notes are unenforceable because they are not supported by consideration and are illusory is preposterous on its face considering that Plaintiffs received over \$1.4 million in interest-free loan proceeds,” Citigroup writes in its response.

Citi says the plaintiffs other arguments are also without merit. “As for Plaintiffs’ theory that accelerating the payment of loan balances on termination constitutes an unconscionable penalty, courts have routinely rejected such theories as a matter of law. Plaintiffs’ theory that CGMI made it impossible for them to perform under the contract or otherwise frustrated the purpose of the loan arrangement also lacks merit because the very events Plaintiffs claim rendered performance impossible, *i.e.*, their resignation, was contemplated by the parties and specifically addressed in the promissory note.”