

GunnAllen and former executive claim victory in arbitration ruling

David McCoy, firm say decision vindicates 2005 dismissal

By Bruce Kelly
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Both GunnAllen Financial Inc. and a former top executive are claiming victory after a lengthy arbitration battle that focused on whether the independent broker - dealer had the right to fire David McCoy, its former chief operating officer and national sales director, who was dismissed in 2005.

Coming from First Montauk Securities Corp. of Red Bank, N.J., he joined GunnAllen of Tampa, Fla., in 2002 and quickly made it one of the fastest-growing independent-contractor broker-dealers, increasing the number of affiliated registered reps from about 200 to more than 900.

GunnAllen and Mr. McCoy, however, had a bitter parting in the summer of 2005. In August of that year, he filed a statement of claim for damages of more than \$34 million, and GunnAllen sued him in a Florida court, claiming it fired him with cause because of "extremely inappropriate conduct," which entitled it to regain control of his shares and stock options.

Now both sides say they won an arbitration complaint that was decided last month after 20 days of hearings and sessions.

On one hand, GunnAllen executives point to the relatively small award of money from the arbitrators — \$536,000, which covers damages, and payment for stock and legal fees — and the fact that Mr. McCoy's claims of fraud against the firm's top executives, including co-founders Richard Frueh, chief executive, and Donald Gunn, president, were deemed not credible by the three-member arbitration panel. Moreover, the arbitrators ruled that Mr. McCoy owed GunnAllen \$182,000 for a promissory note.

On the other side, he said he has scored a triumph, particularly in restoring his reputation in the brokerage business, because the arbitration panel of the Financial Industry Regulatory Authority Inc. of New York and Washington ruled that his termination was "an intentional and malicious breach of contract."

The ruling also permits Mr. McCoy to keep 200,000 shares of GunnAllen stock, which GunnAllen in its Florida lawsuit said should be returned to the firm. In addition, he retains the right to exercise options on 400,000 more shares in the next few months.

Attorneys said that arbitrators' choice of the words "intentional" and "malicious" was clearly a black eye for GunnAllen.

"That's a real clear sign that the arbitrators were incensed and very troubled with GunnAllen," said Andrew Stoltmann, a plaintiff's attorney in Chicago.

Securities arbitration claims that hinge on a firm's firing an employee "for cause," or a reason implied in the contract, can prove misleading, he said. "'With cause' is sometimes [used as] a trumped-up reason to withhold money."

Mr. McCoy's attorney in the arbitration, **Richard A. Roth** of New York, said that GunnAllen fabricated the reasons to fire Mr. McCoy "for cause," including charges of sexual harassment.

"After 20 days of hearings, the panel ruled that what GunnAllen did to Dave was inappropriate," **Mr. Roth** said. "You just can't railroad someone out."

Mr. McCoy is now national sales manager for National Securities Corp. of New York.

Litigation surrounding the dismissal continues. After the arbitration award, GunnAllen filed a motion in Hillsborough County (Fla.) circuit court seeking attorneys' fees.

Executives with GunnAllen, however, are clearly pleased with the arbitration award. "It was a clean sweep, if not for the harsh word and tone of that word 'malicious,'" said David Levine, the firm's national sales manager. "The panel upheld the right to fire him, but not 'for cause.'"

Mr. Levine asked: "If GunnAllen was so malicious, why did" Mr. McCoy receive compensatory damages of just \$333,000 minus the promissory note of \$182,000? In fact, GunnAllen offered Mr. McCoy a compensation package of more than \$500,000 in 2005, and he turned it down, Mr. Levine added.

"I just don't know how anyone can call that a victory," Mr. Levine said.

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