

Merrill to Pay \$750,000 for Defaming Broker by Insinuating Insider Trading

by [Jed Horowitz](https://advisorhub.com/team/jed-horowitz/) |

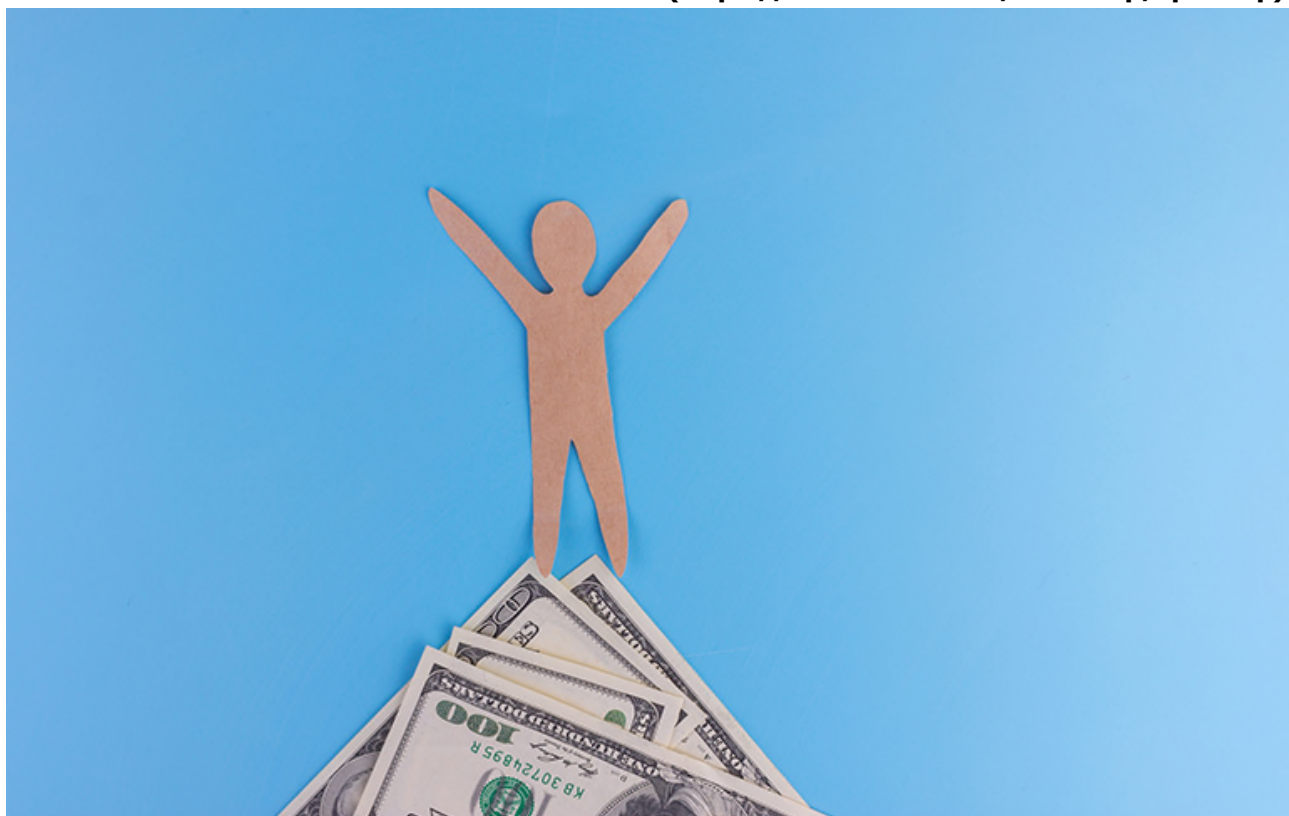
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Arbitrators have ordered Merrill Lynch to pay a fired broker \$750,000 for defaming him by writing on a Form U5 regulatory notice that he was discharged for fraud or theft involving possible insider trading.

Ironically, Merrill initiated the arbitration claim against Miguel Andres Ballestas, seeking repayment of the \$407,451 balance on a promissory note he had signed as part of a retention package when the firm was purchased in 2009 by Bank of America. The broker, who responded with a counterclaim alleging defamation, had worked at Merrill for almost 27 years prior to his June 2014 discharge, according to his BrokerCheck history.

Ballestas, now an independent broker at Bolton Capital in Miami, had sought \$26 million in damages. The amount reflects the signing bonus he could have received over nine years from a wirehouse competitor that pulled its hiring offer after reviewing Merrill's filing, according to Michael Taaffe, a lawyer at the Sarasota firm of Shumaker, Loop & Kendrick that represented Ballestas.

"We're happy with the result because it puts firms on notice that they cannot use their compliance or law departments to post notices as a weapon to cut off the legs of advisors ready to go to another firm," Taaffe said. "The next time maybe we'll get punitive damages."

A separate arbitration panel last fall ordered UBS to pay a former broker in Florida \$3 million for allegedly inducing his former clients to file complaints against him (<https://advisorhub.com/ubs-ordered-pay-florida-broker-3-million-defamation/>).

Merrill Lynch spokesman William Halldin declined to discuss details of the Ballestas arbitration.

"We are disappointed that there was any award, but we are gratified that it is a small fraction of the \$26 million sought," he said.

Merrill's claim for repayment of the balance on Ballestas' forgivable loan was settled separately last year, according to the arbitration award decision posted Monday on a Financial Industry Regulatory Authority website.

Ballestas was among some 300 Merrill brokers who reached a \$13.6 million class-action lawsuit settlement (<https://advisorhub.com/merrill-to-pay-13-6-mln-in-withheld-comp-and-stay-bonuses-to-fired-brokers/>) over the firm's withholding of deferred compensation and demands for loan-balance repayment, according to Taaffe. The 2016 settlement was made after Merrill had initiated its claim against the broker for repayment of his retention loan balance.

In addition to its compensatory damage defamation award, the three-person arbitration panel recommended that Merrill expunge the insider-trading language on Ballestas' discharge notices and replace it with the explanation that he was fired for "conduct resulting in loss of management's confidence."

It also recommended that Merrill reverse its U-5 checkmark assertions that Ballestas had been accused of fraud or the wrongful taking of property and of violating investment-related laws, rules or industry conduct standards. Investigations by the firm and Finra investigation found no evidence of insider trading, Taaffe said.

The broker, whose team produced around \$2 million in fees and commissions annually from investors in Colombia, Mexico and Spain, was not immediately available to comment, according to a client associate at his Bolton office. The team includes Felipe Ballestas, who left Merrill in 2016 after 22 years to join his brother at Bolton.

Their exits followed Merrill's decision to significantly reduce services to investors living outside the U.S. amid heightened regulatory scrutiny of anti-money-laundering and related rules. Taaffe's firm had filed a purported class-action lawsuit against Merrill for falsely inducing brokers servicing international clients to join the firm, but subsequently withdrew the litigation (<https://advisorhub.com/former-merrill-international-brokers-drop-class-action-claim/>).
