Merrill Lynch's 'Hail Mary' attempt to compel Dynasty into arbitration over OpenArc breakaway fell yards short after a federal judge blocked the effort -- with a whole series of ramifications

The Bank of America wirehouse's attempt to undo or mitigate the loss of a team that once managed $129 billion in-house will now get riskier, more duplicative and more fragmented.

5 min read

By **Brooke Southall** July 27, 2026

Ari Sonneberg: She rejected the theory that Dynasty somehow consented to arbitration through silence.

Key Points

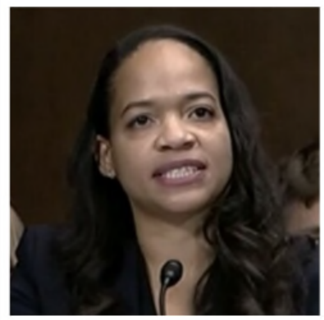
Brooke's Note: The future of fiduciary advice big-footing Wall Street-style transaction-based advice is about putting the client first and getting paid extremely well for it. Yet, ironically, Wall Street itself is the gift that keeps on giving assets under management to the RIA movement. It trains advisors on its dime, builds their businesses with its brands and then lets them walk out the door with their businesses largely intact. Okay, it doesn't let them walk out the door; yet, many make the ecsape without undue drama. But Wall Street does want to create as much drama as it can

> *for OpenArc. If OpenArc can walk out the door with hundreds of staff unrestrained by legal shackles then Merrill Lynch might as well just set up an outplacement office for Schwab and Fidelity. So, we are following this case with RIA journalistic fervor. The plan to lasso Dynasty into a FINRA arbitration was high-risk, high-reward. But now the question is whether the high-profile failure will change the arc of RIA history by removing fear as an obstacle.*

Merrill Lynch's "Hail Mary" attempt for a fast, efficient remedy for the biggest breakaway loss in its history just died after an Atlanta judge agreed with Dynasty Financial Partners that “silence” does not infer “consent.”

Merrill Lynch had accused Dynasty Financial of "reneging" on an arbitration promise that it concedes the Dynasty never made out loud, or in writing – at least not explicitly, according to court documents.

The New York City wirehouse, in effect, attempted to lasso the St. Petersburg back-office provider into the same FINRA arbitration with Schwab Advisor Services and the staff and principals of OpenArc, the former $129 billion AUM, Merrill Lynch Global Corporate and Institutional Advisory Services (GCIAS) team that broke away last September.



Judge Victoria Calvert: Silence does not infer consent.

But U.S. District Court Judge Victoria Calvert for the Northern District of Georgia emphasized that the original order was clear.

“Merrill Lynch’s argument that Dynasty consented to arbitration through silence is unsupported by fact and law,” she ruled. See: Merrill Lynch files motion that berates 'Dynasty' for 'reneging' on arbitration that it says Dynasty sneakily never consented to and now refuses to participate in based on 'implicit' agreement

Transformative

Dynasty cited the judge's clear-eyed ruling as a significant boost for the white-hatted A movement. “Dynasty applauds the well-reasoned decision denying Merrill Lynch’s unfounded and mischaracterized attacks on Dynasty and the entire independence movement," the spkeswoman said in a release.

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Merrill Lynch minimized the significance of the ruling and suggested it's not discouraged by the most recent setback.

"We are aware of the court's procedural decision, and we will continue to vigorously litigate our claims against all of the defendants in both court and arbitration on the merits," a Merrill Lynch spokeswoman said.

Risks, expenses, delay

Merrill Lynch didn't battle for the FINRA arbitration for nothing. With a court trial its only other option, it now faces a new set of perils, risks, expenses and possible delay, says Ari Sonneberg, partner of Wagner Law Group.

"If all defendants were before the same tribunal, Merrill could litigate one coordinated proceeding rather than simultaneously pursuing related claims in both FINRA arbitration and federal court," he says.

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“That reduces the risk of duplicative discovery, inconsistent factual findings, increased costs, and strategic maneuvering between parallel proceedings.

"Beyond efficiency, though, FINRA arbitration is generally faster than federal court litigation and is designed to resolve disputes involving broker-dealers and associated persons. Arbitration also typically provides more limited discovery and reaches a final hearing more quickly than a civil lawsuit.”

Long odds

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An attorney close to Dynasty and OpenArc, who asked not to be named to speak candidly, said Merrill's attempt to bring Dynasty into the FINRA arbitration was always a “Hail Mary” at best, not least because Dynasty is not a member of FINRA, and, hence, not under its jurisdiction.

Sonneberg says Merrill Lynch likely swallowed the long “Hail Mary” odds of success because even the slender chance of a win made it worth a flier.

“Almost certainly Merrill’s legal team knew this was a losing battle but took a shot in the dark because the upside of possibly having all the parties under FINRA arbitration was, understandably, so compelling," he said.

“If the Dynasty entity that Merrill sued was never contractually obligated to arbitrate before FINRA, there may never have been a viable legal basis to compel it into that forum," he adds.

"Faced with that obstacle, Merrill attempted to argue that Dynasty had effectively consented to arbitration through its conduct during the litigation. The Judge rejected that theory, emphasizing that consent could not be inferred from silence or ambiguous statements in the record.

"In other words, the court's opinion suggests the problem was not merely how Merrill litigated the issue, but that the necessary legal predicate for compelling arbitration may never have existed in the first place.”

Far from over

Merrill indeed promises to keep proceeding against Dynasty, despite being routed in the earlier hearings with losses and vociferous judge's ruling against it.

“The opinion does suggest that the court was unpersuaded by both the substance and the presentation of Merrill's motion,” Sonneberg says.

“The litigation becomes more fragmented, which of course is less than ideal for Merrill, but it is far from over.

"Merrill's statement reflects exactly that distinction. It is signaling that it intends to continue pursuing all available claims, just through the appropriate forums.”

Brooke Southall

Brooke lives on a houseboat, works in an office and juggles calls across the five time zones and four countries his small team works. He's out to prove an economic major can make a living as a journalist and that articles need not be a loss leader if they are written well and geared to an intelligent readership.

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Keith Girard contributed to the editing of this article.

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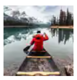

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Schwab, Dynasty and Merrill Lynch breakaway team gain 'leverage' in coming arbitration after rebuffing Merrill's TRO attempt -- but Merrill is still calling it a 'raid' and conspiracy that it will prevail on

Defendants Schwab and Dynasty weighed in with sharp, written responses defending their part in aiding the $129-billion OpenArc RIA opening for business; Merrill is calling TRO process a 'first step'

By **Brooke Southall** September 30, 2025

Updated: October 1, 2025

Shirl Penney: “It's not leveled the playing field. It has tilted in our favor in the RIA space.

> ***Brooke's Note: The RIA business is not immune from a sense that it's one step forward and two steps back at times. So it's a big deal that Dynasty, Schwab and OpenArc won their first legal round against Merrill Lynch. See:*** *Charles Schwab and Dynasty pull off record-shattering -- and previously unthinkable -- lift-out of $129-billion AUA Merrill Lynch team, but the thundering herd has furiously stampeded to court to block the move* ***It feels like three steps forward for the $129-billion RIA and its two principal vendor partners. Yes, there's still a big FINRA arbitration to come, but as the lawyers says in this article, the momentum from this round surely is a good omen. And the arbitration is less about crushing the business, as the TRO had the potential to do, and more about money. Losing money would likely only be one step back for an RIA with a world of promise to generate revenues outside the confines of a wirehouse.***

Federal Judge Victoria Calvert gave Merrill Lynch breakaway OpenArc Corporate Advisors the green light today (Sept 30) to stay open for business, and signaled that other wirehouse teams once deemed too big to break away can do the same.

“This changes everything. Any team, any size can choose independence for their clients, team and family,” said Shirl Penney, Founder and CEO of Dynasty Financial Partners, a defendant in the action, in a text message.

“It's not leveled the playing field; it has tilted it in our favor in the RIA space.” See: Merrill Lynch faces 'significant hurdles' to convince judge to restrain its former $129 billion team from pursuing life as Schwab RIA, attorney says

certainly lessens Merrill's bargaining power as the matter rolls ahead, according to

Ari Sonneberg, partner with Wagner Law Group.

"This is definitely a victory for OpenArc, et. al., and will affect the level of leverage Merrill has in any negotiations to settle this matter," he says.

Merrill Lynch offered a different take through a spokesperson.

"The injunction hearing is only the first step in the litigation process," she writes. "We look forward to vigorously pursuing this matter in arbitration and are confident that a FINRA panel will agree that the defendants engaged in a corporate raid and conspired to poach our employees and clients."

Merrill Lynch filed a lawsuit last Tuesday (Sept. 24) in federal district court in Atlanta, seeking a temporary restraining order (TRO) to corral OpenArc, which had announced the new company on the same day. Schwab, Dynasty and 12 OpenArc principals were named as defendants.

Brian Hamburger: 'Defeating the TRO is a pivotal battle.'

Brian Hamburger, chief counsel for Hamburger Law Firm, says Merrill's TRO loss matters in the bigger war – and the frantic legal scrambling will now calm down.

"Defeating the TRO is a pivotal battle in the war, for sure," he says. "It means that Merrill was unable to carry their burden and show that they would suffer irreparable harm by this transition."

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He adds: "The case will presumably proceed on a more traditional pace against the defendants in arbitration before the FINRA [Financial Industry Regulatory Authority]."

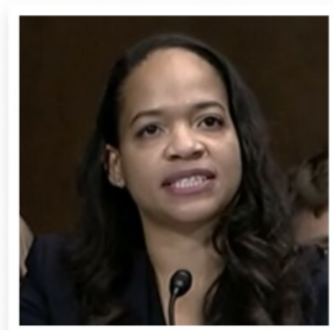
The harm factor played a big role, Sonneberg explains.

“Certainly, the fact that the cat was already out of the bag, i.e., that any real harm that may actually exist if at all, has already occurred, did not work in favor of Merrill in its bid for a TRO,” he said by email.

“Beyond showing a likelihood of the case succeeding on the merits – and it seems Merrill has likely not convinced the Court of that in its pleadings thus far – in order to obtain injunctive relief a plaintiff must show a likelihood of irreparable harm that would result from defendant’s not otherwise being barred from continued activity until the case is resolved – the Court was clearly not swayed by Merrill’s motion alleging probable continued harm. ”

Falling short

Penney's swagger was only surpassed by his attorneys in their response, which taunted Merrill for having a one-week head start yet failing to capitalize with “a single factual allegation of theft of ‘trade secrets’ or solicitation."



Victoria Calvert: Merrill not persuasive.

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Nor has it mounted "an argument to overcome the Protocol for Broker Recruiting, which Merrill Lynch helped to draft relies upon every day when recruiting brokers to leave their firms, and knows is an absolute bar to this motion," they charged.

Schwab asserted in a response that "Merrill had failed to demonstrate that the balance of hardships tips in its favor or that the Injunction is not adverse to the public interest."

Calvert, who was appointed to the bench in 2021 by then-President Joe Biden, sided with the defendants after a three hour hearing, according to press reports.

Ruling from the bench, she said Merrill had failed to present enough evidence to meet the legal burden required for a temporary restraining order because most of the damage to its business had "already happened," Citywire reports.

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Big loss

The TRO battle has the look of a tone setter for the wirehouse, said Patrick J. Burns, Jr., managing attorney for The Law Offices of Patrick J. Burns, Jr. in Los Angeles.

"This is appears to be a big loss for ML, and very well could set the tone for how the rest of this lawsuit plays out," he said by email.

“In general, declarations from interested parties.. which have statements such as ‘I believe, ’it stands to reason,' ‘one can only conclude’ are usually the product of a rushed filing or case lacking hard supporting evidence,” he said.

While cautioning he had yet to see the ruling itself, Burns' assessment seemed to sum up the case at this point.

“Merrill does not allege a single actionable fact against Schwab, because it has none. Instead, Merrill’s papers rely exclusively, and improperly, on allegations based purely on ‘information and belief’ and ‘understandings,’” Schwab asserted.

“Merrill’s rank speculation… is insufficient to support any claim against Schwab, let alone demonstrate a substantial likelihood of success.”

Who zoomed whom?

Both sides in the suit alleged that the other engaged in underhanded tactics.

Before the breakaway brokers left the firm, they used threats, scare tactics and willful misappropriation of trade secrets to lure others to leave with them, Merrill asserted.

“In sum, while still employed at Merrill, the individual defendants acted to maximize dysfunction, create fear and confusion, and leave behind a wake of disrupted business operations,” Merrill stated in its complaint.

About 120 employees, including 50 advisors resigned from the wirehouse’s 170-person, high-net-worth team, Global Corporate and Institutional Advisory Services (GCIAS) to join OpenArc.

The OpenArc principals countered that Merrill not only set them up to buy time in secret to prepare the suit and fire them, but also filed the suit without their knowledge to drag their reputations "through the mud via the press.”

Both Dynasty and Schwab said they received no notice of the filing and learned about the action from press reports.

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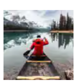

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