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

The Bank of America wirehouse concedes any agreement may be implicit, and FINRA can't control non-members like Dynasty, but an implicit agreement exists, nonetheless, and justice must be served.

8 min read

By Brooke Southall February 17, 2026

Rachael Luken Carp: "Justice delayed is justice denied."

Key Points

> ***Brooke's Note: The breakaway from Merrill Lynch of its Global Corporate & Institutional Advisory Services (GCIAS) team to become OpenArc has been Alice-in-Wonderland from the start. A too-big-to-break-away firm walked right out the door. Then Merrill got essentially nowhere with a raiding claim against its former employees. Now, in another down-the-rabbit-hole moment, the wirehouse is essentially saying in a motion that it is being bullied by an RIA and its accomplices, Dynasty and Schwab. No doubt Dynasty is playing hardball because it wants to win autonomy for a team in which it now holds a stake.*** *See: Dynasty Financial Partners*

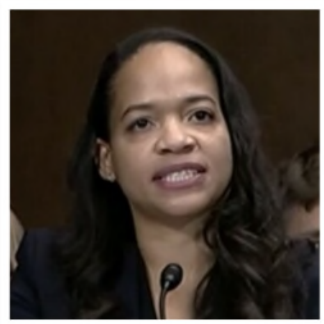
> *raises more than $100 million with plan to get 'aggressive' if market turns 'choppy' -- and it'll hire 65 to 70 staff* ***But it does cause some cognitive dissonance to hear Merrill pleading with a judge for justice. The judges thus far seem to be having a hard time swallowing the Merrill argument that it is the sheep among wolves.***

Merrill Lynch is accusing Dynasty Financial of "reneging" on an arbitration promise that it concedes the defendant never made out loud, or in writing – at least not explicitly, according to a new court document.

The filing alleges that Dynasty made a sort of unscrupulous bluff by acting as if it agreed to something to later – explicitly – make clear it had not. See: 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

“The lack of candor, with Merrill and with this Court, is shocking," the New York City wirehouse argued in the unusual filing last Thursday (Feb. 12) in federal District Court for the Northern District of Georgia.

The motion – seeking to force all parties to submit to arbitration – is the latest broadside in a hotly contested lawsuit filed by Merrill last September against a $129 billion, high-net-worth advisory team and Dynasty and Schwab.



Judge Victoria Calvert: Intially heard the motion for a restraining order.

Merrill sought a temporary restraining order (TRO) to block the breakaway, and the hearing ended with a seeming agreement among the parties to arbitrate the matter before the Financial Industry Regulatory Authority (“FINRA”).

But Dynasty never informed Merrill, either during the TRO hearing or in the nearly three months thereafter, that it did not consent to arbitrate. The notice finally arrived on Jan. 14,. “Dynasty informed Merrill for the first time that it would not consent to arbitrate,” the latest motion states.

“Dynasty quietly took a position, incompatible with the record, that it never consented to FINRA arbitration and would not submit to FINRA’s jurisdiction,” Merrill alleges.

"Dynasty knew exactly what it was doing. It stayed silent because if it informed the Court that it did not consent to arbitrate, it could affect not only the Court’s decision on Merrill’s motions for a TRO and expedited discovery, but also the Court’s decision whether to stay the proceedings as to all parties - and that is exactly what happened.”

New attack

Merrill's motion seems lacking, says Wagner Law Group Partner Ari Sonneberg, who reviewed the filing.

Ari Sonneberg: ‘It is difficult to believe that Merrill relied on an oral agreement.’

“The pleading is light on details, but it looks like Merrill is claiming that Dynasty ‘agreed’ during and after a TRO hearing to go to FINRA arbitration by virtue of its conduct... Not really clear exactly how that situation went down - the lack of detail in this pleading though, is curious...”

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Abbey Collins, Bank of America spokeswoman, says that her firm has a simple objective.

“We have filed a motion to lift the stay in federal court or compel Dynasty to participate in the FINRA arbitration, so that we can pursue our claims against them in the appropriate forum.”

A spokeswoman for the Dynasty, Schwab and OpenArc side says Merrill already had a swing and a miss at a TRO and arbitration.

"Merrill sent an email to the judge requesting to lift the stay in the federal case or order Dynasty to arbitration. The judge denied the request," she said.

"Merrill just filed a formal motion requesting same (lift the stay in the federal case or order Dynasty to arbitration)," she added.

"Dynasty strenuously disagrees with Merrill's continuing mischaracterizations at every point in this matter, and we are preparing our response to this most recent attack."

Paper thin

Merrill Lynch may be suffering the consequences of not getting an explicit written agreement – though that is not clear, according to Sonneberg.


Erik Bjerke: Led the breakaway and is lead defendant in the lawsuit.

Sonneberg says his law professor had a memorable quip about unwritten agreements.

Story Timeline


Feb 9, 2026
23 days ago

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Sep 30, 2025
5 mo ago

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Sep 24, 2025

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“'He who sells his horse for a promise, deserves to walk.'

"Indeed, oral agreements will rarely be deemed to be enforceable contracts, and are not worth the paper they aren't written on.

"It is difficult to believe that Merrill relied on an oral agreement and a handshake regarding arbitration, or anything else for that matter - it has many fine attorneys at its beck and call, I'm sure.

“But if it did, it would have been very naive to do so, and, without any subjective evidence to otherwise support the existence of such an agreement, in all likelihood they will not be able to enforce it.”

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Justice delayed...

In her Oct. 1 ruling, Judge Victoria Calvert also seemed to be under the impression that OpenArc and the other defendants agreed to arbitration.

The Court based its decision to stay the action as to all parties based on its understanding that “[d]uring the hearing, Plaintiff and Defendants, including Defendants Dynasty Financial Partners, LLC and Charles Schwab & Co., Inc. agreed that this matter is properly before the Financial Industry Regulatory Authority ('FINRA').

“The Court agrees and finds that FINRA arbitration is the proper forum for this matter,” according to the filing.

Rachael Luken Carp, an attorney for Rubin, Fortunato & Harbison P.C. of Wayne, Pa., representing Merrill, is the signatory of the motion, which noted that the investment bank finds itself in an unenviable position.

“Merrill now finds itself at a procedural impasse,” the motion reads. "Dynasty, despite its conduct during the TRO hearing and thereafter, refuses to arbitrate, and the court action is stayed.

“Dynasty is trying to avoid accountability for its misconduct, and it should not be permitted to use its self-manufactured limbo as a shield to prevent Merrill from pursuing its claims,” court papers state.

"Dynasty must answer for its actions in either court or arbitration, but it cannot sit on the sidelines because justice delayed is justice denied."

The motion states that the time involved – just for the arbitration itself – is weighing on the matter.

"The FINRA arbitration will take at least two years to conclude. If Merrill is forced to wait two years before it even begins pursuing its claims against Dynasty in court, the case will languish interminably.

“During that time, witnesses could die or find other employment, memories surely will fade, and the harm Dynasty caused Merrill will remain unremedied. Equity dictates that Merrill be permitted to pursue its claims against Dynasty now.”

Implicit vs. explicit

errill's motion also concedes that Dynasty is not a FINRA member, hence can not be forced by the brokerage regulator to arbitrate.

Still, it contends the implicit agreement supersedes lack of an explicit one.

“In its February 5, 2026 email to the Court, Dynasty misapprehends Merrill’s position concerning why it should be required to arbitrate," says Merrill in the filing. "Dynasty is not a FINRA member firm and, without consent, it cannot be required to arbitrate.

“However, through its conduct at the TRO hearing, Dynasty, either explicitly or implicitly, consented to arbitration. Merrill’s position, simply, is that Dynasty cannot now, because it is strategically convenient, withdraw that consent to avoid arbitration and overall accountability for its conduct.”

But back in Septemebr, legal sources told RIABiz that the original TRO ruling never augured well for Merrill Lynch.

“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,” said Patrick J. Burns, Jr., managing attorney for The Law Offices of Patrick J. Burns, Jr. in Los Angeles.

“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 in an email.

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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