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UBS Can't Escape Or Arbitrate Laid-Off Workers' Claims

By **Christine Powell**

Law360 (March 19, 2018, 8:49 PM EDT) -- An Illinois federal judge on Monday rejected UBS Securities LLC's attempt to dismiss or force arbitration of proposed class and collective action allegations that it forces laid-off workers to sign away any claims against it in order to receive some deferred compensation, a scheme that allegedly disproportionately affects its older staff.

U.S. District Judge Matthew F. Kennelly denied UBS' motion to compel arbitration of claims asserted by named plaintiff Shannon Zoller and to dismiss claims asserted by named plaintiff Alexander Beigelman, who previously worked for the company as an executive director and as a managing director, respectively.

UBS has argued that, regardless of the merits of the case, Zoller and Beigelman signed agreements requiring arbitration of disputes with the company. And Beigelman has already begun to arbitrate a separate set of claims about his termination, so his claims must be dismissed for improper venue, the company has said.

But Judge Kennelly disagreed. For one thing, a Financial Industry Regulatory Authority rule precluding arbitration of class and collective claims like Zoller's and Beigelman's applies here, the judge said in a memorandum opinion and order.

Additionally, the class and collection action waivers asserted by UBS are invalid under **the Seventh Circuit's 2016 ruling** in *Lewis v. Epic Systems Corp.*, in which the circuit court held that arbitration provisions barring employees from bringing class actions violate the National Labor Relations Act. The U.S. Supreme Court has since agreed to review that ruling.

"The class and collective action waivers that UBS presents are among the types of agreement that Lewis declares to be unlawful," Judge Kennelly said. "Just as the Epic Systems waiver purported to eliminate its employees' NLRA-protected right to engage in litigation as a class, the UBS waiver is similarly inconsistent with the NLRA and thus unenforceable under Lewis."

The judge also rejected UBS' contention that Beigelman cannot proceed with the lawsuit because of the pending parallel arbitration, an argument it has claimed is supported by three cited cases.

"None of the cases, however, actually stand for that proposition," Judge Kennelly said.

In the underlying complaint, Zoller and Beigelman accuse several subsidiaries of UBS AG of **implementing a policy** that employees laid off during staff reductions targeting

redundancy must sign a release to receive money they earned through incentives and deferred compensation.

That policy violates the terms of UBS' employee contracts and unfairly impacts its oldest employees because they earn more incentive and deferred compensation than the younger, more recently hired staff, according to the complaint.

UBS waits to terminate employees until it is within an Internal Revenue Service grace period where it has deducted the incentive compensation that its employees earned in the tax year but won't actually receive until the first few months of the next calendar year, the complaint said.

It's then, before the employees have received their money, that they are confronted with a layoff and the release, according to the complaint.

The employees are "unlawfully presented with a Hobson's choice: sign a release forfeiting the prior year's incentive and deferred compensation and/or all discrimination claims against UBS, or forfeit all earned incentive compensation, deferred compensation and severance pay," the complaint said.

Zoller and Beigelman both assert common law claims, and Beigelman also asserts a claim under the Age Discrimination in Employment Act and the Older Workers Benefit Protection Act.

Representatives for the parties could not immediately be reached for comment Monday.

Zoller and Beigelman are represented by Linda Friedman and Matthew J. Singer of Stowell & Friedman Ltd.

UBS is represented by Eugene Scalia and Molly T. Senger of Gibson Dunn.

The case is Zoller et al. v. UBS Securities LLC et al., case number 1:16-cv-11277, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Diana Novak Jones, Kevin Penton and Jessica Corso. Editing by Marygrace Murphy.