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Securities America not off the hook yet?

By Bruce Kelly

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NEW YORK - Securities America Inc. lost a staggering $31.3 million in two NASD arbitration claims last year and could be on the hook for millions more in 2007, according to a plaintiff's attorney involved in the case.

Industry observers question whether the firm was simply lax in its oversight of some of its brokers or has had a run of extremely bad luck with unscrupulous advisers.

But losing two multimillion-dollar NASD arbitration claims in the span of eight months - one in May for $22 million and the other in December for $9.3 million - was nothing short of astonishing, some observers said.

"Back-to-back losses are extraordinary," said Thomas R. Ajamie, a plaintiff's attorney in Houston. "And these are big dollar amounts."

Industry observers noted that Omaha, Neb.-based Securities America, a leading independent-contractor broker-dealer with 1,793 affiliated registered representatives, is backed by its parent, Ameriprise Financial Inc. of Minneapolis, and could financially weather losses of

a magnitude that would likely devastate an independently owned

broker-dealer.

"Securities America takes these matters seriously and continues to enhance its compliance policies, procedures and oversight," Chris Reese, a company spokesman, wrote in an e-mail.

Stain on compliance

Some in the industry take the giant securities arbitration losses as a stain on the firm's compliance and oversight of brokers.

Securities America "was asleep at the wheel," said Richard Elliott, one of the attorneys representing retired American Airlines pilots in a case against a former Securities America affiliated broker, Robert Gormly Jr.

Mr. Elliott said that he has two dozen more such clients involved in two separate claims against Securities America and Mr. Gormly.

Those individual cases typically range between $100,000 and $2 million, said Mr. Elliott, adding that a couple were even more substantial.

"Gormly is the bad apple," he said. "But I think Securities America - across the board - has no proper supervision" of its affiliated brokers, he said.

Others with knowledge of the firm strongly disagree.

"Securities America and [chief compliance officer] David Spinar are at the top of their game," said Larry Papike, president of Cross-Search, a recruiting firm in Jamul, Calif., that has Securities America as a client.

The firm's review of potential new brokers "is as tight as anyone's in the business," he said. "They do as much due diligence as anybody."

Mr. Papike, however, acknowledged that a broker-dealer sometimes has little defense against a truly unscrupulous adviser.

"There's only so much you can supervise," he said. "If somebody is going to decide to be a crook, they're going to be a crook."

The two huge arbitration cases focus on two former Securities America affiliated brokers in neighboring states in the South.

The claim, which was decided last month by a three-member arbitration panel, was filed against Mr. Gormly and Securities America by three former clients, all retired pilots of Fort Worth, Texas-based American Airlines Inc. The claim alleged that in 1998, he began liquidating mutual funds in clients' retirement accounts and purchasing more-aggressive funds, a practice that continued until 2003.

By that time, Mr. Gormly, who is based in Flower Mound, Texas, allegedly had sold every investment each of the retired pilots had and was actively trading leveraged funds from Rydex Investments on a nearly daily basis.

The panel also ordered Securities America to pay $3 million in punitive damages as part of the award. Attorneys and industry executives noted that punitive damages in such arbitration cases are extremely rare and are sometimes an indication of the arbitration panel's anger or frustration with the respondent broker-dealer.

Mr. Gormly, who resigned from Securities America in 2004, and the firm are jointly liable for $3.9 million in compensatory damages and $2.4 million in attorney fees.

Mr. Elliott also is representing other airline pilots and family members in a lawsuit against Rydex Investments of Rockville, Md., which managed the mutual funds involved in the case.

Because of the pending litigation, Rydex would not comment, said Lori Klash, spokeswoman.

"However, we stand by our products," she said.

The claim involving Mr. Gormly came on the heels of another huge case involving a Securities America adviser.

In May, an NASD arbitration panel ordered Securities America to pay $22 million to 32 former employees with Exxon Mobil Corp. of Irving, Texas. Ameriprise at first said that it would appeal the award and in September reached a settlement with the Washington-based regulator.

At that time, the firm agreed to pay $13.8 million in restitution, plus a $2.5 million fine for failing to supervise the broker at the center of the case, David McFadden, who was based in Baton Rouge, La.