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## Willkie Made Client Scapegoat In FINRA Probe, Suit Says

By **Brian Mahoney**

*Law360, New York* (February 19, 2013, 2:37 PM ET) -- A former Ramius Securities LLC manager sued Willkie Farr & Gallagher LLP in New York state court on Friday, alleging the law firm disclosed privileged attorney-client communications to make him the fall guy in a Financial Industry Regulatory Authority investigation of the broker-dealer.

Dennis T. Palmeri said Willkie allowed the disclosure of privileged communications and permitted testimony to support FINRA's position that he had impermissibly used stock finders while working as a manager in Ramius' now-defunct stock lending securities department.

The firm did so to protect Ramius, it's far more affluent client, according to the complaint.

"Willkie sought to represent Ramius recognizing it as a successful investment management company and highly valuable client, as opposed to its limited, and less profitable, engagement with Palmeri," the complaint said.

The 2008 FINRA investigation into Ramius allegedly involved Palmeri's father, also named Dennis, who had been convicted in 2004 for illegally performing stock loan functions requiring registration while working at Shields Institutional Service Inc. FINRA had suspected that the elder Palmeri might have been involved in Ramius loan transactions as an unauthorized stock finder, according to court documents.

So-called stock finders typically locate securities for lending and borrowing in exchange for a fee from the lenders. But stock finders must be registered and can unjustifiably increase the cost of the loan to the detriment of the borrower if their services are not necessary, according to the complaint.

According to the complaint, the younger Palmeri secured Willkie partner Gregory S. Bruch to represent him in the ongoing FINRA investigation in 2008.

Bruch was fully aware that the firm also represented Ramius on separate matters but assured him that the dual-representation would not matter because there was no adverse relationship between Palmeri and Ramius, the complaint says.

But Palmeri claims Bruch eventually forced him into allowing Willkie to represent Ramius in the FINRA inquiry, wrongly assuring him that the interests of both Palmeri and Ramius were aligned and not likely to become adverse.

“Bruch strong-armed Palmeri into agreeing to Willkie’s joint representation of Ramius, and its current and former employees, once more arguing that it was best for Palmeri to ‘stay close’ to his former employer and that the parties were not, and were not ‘likely’ to become, ‘adverse,’” the complaint said.

Palmeri also claims that, once Baruch began representing Ramius as a client in the investigation, the firm began to target Palmeri as a scapegoat, using the testimony of other Ramius employees to implicate Palmeri as the main culprit in the use of unauthorized stock finders, the complaint said.

“Willkie knowingly focused on Palmeri as the target of FINRA’s investigation,” Palmeri said. “In doing so, Willkie shifted all responsibility for any alleged violations of FINRA’s rules onto its former client, Palmeri, in an effort to protect the interests of its current client, Ramius.”

Allowing the testimony of other Ramius employees that implicated Palmeri in alleged wrongdoing also represented a breach of the firm's duty to Palmeri and a clear conflict of interest for the firm, the complaint says.

“This conduct created a conflict of interest arising from Willkie’s ongoing attorney-client relationship with Palmeri and constituted a breach of that relationship,” the complaint said.

Palmeri is now seeking damages for breach of fiduciary duty, gross negligence and breach of implied covenant, among other claims, according to the complaint.

FINRA censured Ramius in 2010 and fined it \$200,000 for its improper use of stock finders in loan transactions.

“[Ramius] lacked supervisory systems and written procedures reasonably designed to prevent and detect improper use of, and payment to, finders used in stock loan transactions,” FINRA said in 2010.

Palmeri originally sued Willkie in New York federal court but dismissed that case last week in favor of the state court action, according to court documents.

Willkie declined to comment Tuesday.

Palmeri is represented by Joshua S. Bauchner of Ansell Grimm & Aaron PC.

Counsel information for Willkie was not immediately available.

The case is Palmeri v. Willkie Farr & Gallagher LLP, case number 650501/2013, in the Supreme Court of the State of New York, County of New York.

--Editing by John Quinn.