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A.G. Edwards' Challenge to OT Pay Fails

By Halah Touryalai

Aug 8, 2006 2:16 PM

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Are registered reps hourly employees and, therefore, entitled to overtime? The overtime-pay case keeps getting stronger. On July 31, a California court announced that it would not dismiss an overtime-pay case brought against A.G. Edwards under a Depression-era law that was crafted to protect blue-collar workers. The St. Louis-based brokerage house filed a motion for summary judgment—essentially arguing that the overtime-pay case had no merit. (For complete background, please read *Registered Rep.'s* May cover story, "Wall Street Wage Fight".)

U.S. District Judge John Houston, in the southern district of California, ruled that "there is genuine dispute" as to whether the firm intentionally misclassified its reps as "non-exempt" from the Fair Labor Standards Act of 1938 and failed to pay them overtime. This is the first time a judge has ruled on the arguments surrounding the recent wave of overtime suits facing Wall Street firms.

During oral arguments in April, A.G. Edwards, the only firm to file such a motion in the overtime cases, claimed that their highly compensated stockbrokers were exempt from overtime under the Fair Labor Standards Act because they were paid a "draw." But plaintiffs' lawyers argued that draws do not exempt employees from overtime pay and that the firm failed to pay plaintiffs on a "salary basis," as required by the FLSA, in order to classify employees as exempt. The court sided with the plaintiffs, saying the defendants failed to meet the requirements established under the FLSA for exempt employees.

Mark Thierman, the Reno, Nev.-based labor lawyer representing the plaintiffs in this and other OT cases, says this summary judgment motion may have backfired for A.G. Edwards. Unlike previous settlements by wirehouses with reps suing for overtime pay, A.G. Edwards must now proceed knowing that a judge had doubts about its overtime-pay practices. The firm will either see the case through in court or settle outside of court.

Thierman says, "Before we were dealing with people about ifs and buts. The arguments the defense raised have been reduced to rubble. The value of the case has definitely gone up." If the case is class-action certified by a court, it would represent about 9,000 reps, according to Thierman.

A.G. Edwards, of course, is not alone in the debate. Since 2005, four major Wall Street firms have settled overtime cases. Morgan Stanley and Merrill Lynch settled in California for \$42.5 million and \$37 million, respectively. UBS agreed to pay up to \$89 million, and Smith Barney settled for \$98 million with its reps, both on a nationwide basis.

Lawyers at Morgan Lewis, who are representing the defendants, could not be reached for comment.

For a wage fight follow-up story from *Registered Rep.'s* June issue, please

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