

## Court Awards Reservist \$926K in USERRA Case

An Air Force reservist is a major step closer to receiving \$926,506 in back pay and damages, after winning another round in his court fight for his federal re-employment rights.

It's one of the largest cases ever under the Uniformed Services Employment and Reemployment Rights Act

, attorneys said.

Michael Serricchio was a financial adviser who was paid on commission by Prudential Services, Inc., in Stamford, Conn., when he was called to active duty in 2001.

The U.S. Court of Appeals for the 2nd Circuit upheld a lower court ruling Tuesday that Serricchio's employer, Wachovia, had violated his USERRA

rights.

"This is an important case, especially with the activation of so many Guard and Reserve members," said Serricchio's attorney, David Golub. "People with commission jobs should get back not just their jobs but their earnings."

Officials at Wells Fargo, Serricchio's employer, had no immediate comment on the ruling or whether they plan to appeal. In the years since Serricchio was mobilized in 2001, his original employer, Prudential, merged with Wachovia, which subsequently merged with Wells Fargo.

Serricchio alleged that Wachovia violated his USERRA

rights by not reinstating him immediately to a position of similar status and pay after he was demobilized.

Tuesday's appeals court ruling cited a Department of Labor brief filed in support of Serricchio contending that Wachovia should have offered him his original and/or comparable client accounts. Instead, Wachovia offered Serricchio a book of business that required him to "cold call" to rebuild his client accounts, diminishing his level of responsibility and his pay.

According to the appeals court ruling, Wachovia had argued that its obligation to a returning service member employed in a straight commission job is only to provide the same commission structure, "without reference to the broker's prior book of business."

"Wachovia said all they had to do was give him the same rate of commission, and if his book of business goes away, tough luck," Golub said.

The appeals court upheld the lower court's decision to award Serricchio \$389,453, and damages in the same amount. They also ordered Wells Fargo to reinstate Serricchio as a financial adviser, and offer him a salary of \$12,300 a month for three months while he regains his broker's licenses.

Wells Fargo also was ordered to pay Serricchio a monthly "draw" of \$12,300 for the next nine months, which will be offset against any commissions he earns during that time.

“This decision serves as a shield for service member re-employment,” said Mathew B. Tully, an attorney who specializes in USERRA cases.

“The 2nd Circuit has declared that employers — namely the financial wizards on Wall Street — cannot stretch the meaning of the law to shortchange returning service members the compensation they are owed,” said Tully, who writes a biweekly legal column for Military Times.