

Air Force Reservist Wins Appeal on one of the Largest USERRA Lawsuits Ever

The 2nd U.S. Circuit Court of Appeals has decided in favor of an Air Force reservist in his case against Wachovia Securities LLC, providing a major victory to service members who leave well-paying commission jobs to serve their country in the armed forces.

The case *Serricchio v Wachovia Securities LLC, Prudential Securities Inc.*, involved Michael Serricchio who worked as a financial advisor for Prudential Securities in 2001 when he was called to active duty following the terrorist attacks of Sept. 11, 2001. He actively served for two years before returning back home safe and secure. Serricchio, however, soon discovered his career was not secure. Prudential in 2003 merged with Wachovia which is now Wells Fargo. After Wachovia for months ignored Serricchio's request for reinstatement to his pre-service position, in accordance to the Uniformed Services Employment and Reemployment Rights Act (USERRA)

, the company offered him his old financial advisor position at the same pre-service commission rate. However, the book of business Wachovia provided him featured few opportunities to generate commissions, meaning his total compensation would fall far below pre-service levels.

USERRA

protects individuals who, voluntary or involuntary, leave their civilian job and perform military duties as long as they meet certain criteria. Serricchio met all the qualifications and therefore filed a lawsuit accusing Wachovia of violating his USERRA

rights. The U.S. District Court of Connecticut ruled in favor of Serricchio in 2009 and ordered Wachovia to pay the reservist \$926,506 in backpay and liquidated damages and to reinstate him to the position as financial advisor with a salary. The Sept. 13 decision by the federal appellate court in New York affirmed the lower courts rulings.

"This decision serves as a shield for service member reemployment" said Mathew B. Tully, founding partner of Tully Rinckey PLLC, a multistate employment law and military law firm. "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. Banks strictly adhere to the bottom line, but here's my bottom line: Don't mess with service members' USERRA rights."

With hundreds of thousands of U.S. men and women still serving overseas, USERRA will become even more important as the United States continues to bring more troops home from Afghanistan and Iraq in the coming months.

