Former Employees Who Couldn't Wait to Leave Their Florida Employer Before Illegally Competing Ordered to Pay Heavy Price

Insights
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A Florida Circuit Court judge sternly rebuked two former employees of a private South Florida provider of Autism treatment services who began competing illegally with a new employer – while still employed with their old employer. The court ordered them to pay their former employer more than $5 million in damages and attorneys' fees for violating their valid Non-Disclosure and Non-Competition agreements. The lesson from the ruling is two-fold: such agreements are still fully enforceable in Florida, and employers must be vigilant in protecting their secrets and key customer relationships, especially while their workers are still employed with the company.

Egregious Facts Lead to Massive Judgment

Broward County Circuit Court Judge Jack Tuter said that in his 19 years on the bench and presiding over many non-compete cases, "none were as egregious as this one. It was clear from the outset that Defendants set forth in a surreptitious and purposeful manner to divert away both revenue and patients from their employer for their own profit and gain."

Judge Tuter's scathing Final Judgment issued on August 7 followed a three-day non-jury trial earlier this summer in the matter of *Therapies for Kids v. Sobrino-Sanchez, et al.* The case started in February 2020, shortly after Therapies for Kids' (T4K's) Chief Administrative Officer was cleaning out the office previously occupied by former employee Maria Santoro. He discovered documents showing that Santoro and Victoria Sobrino-Sanchez had diverted T4K's patients *and* money derived from patient's accounts for services performed by T4K therapists into their own bank accounts.

As the court stated, Sobrino-Sanchez and Santoro took advantage of information provided to them during their employment with T4K including patient data to form competing businesses while they continued their employment with T4K. "While drawing a salary with T4K, they were concurrently stealing clients and opening their own competing business," the court said. "This went on for many years before their fraud was discovered."

Former Employer Takes Employees to Court – and Wins Big

Although Florida's statute against unfair competition is generally regarded as a pro-enforcement statute that allows aggrieved parties to seek a court order blocking former employees or their new employers from continuing their unfair behavior, the plaintiffs in this instance did not seek such

employers from continuing their "unfair" behavior, the plaintiffs in this instance did not seek such injunctive relief. This is likely because the defendants had been competing illegally against the plaintiff for years while still employed. In essence, it was too late in the game to stop them from doing further bad deeds, but they certainly could be sued for monetary damages.

Which is what T4K did – quite successfully. The court found in its favor of T4K on 12 of the 27 counts they brought against the defendants, including claims for Breach of Contract, Breach of Fiduciary Duty, Tortious Interference with Contractual Relationships, Civil Conspiracy, Tortious Interference with Business Relationships, Breach of Duty of Loyalty, Unjust Enrichment, Fraud, and Conversion.

As part of the damages award, the court found T4K and its related entities had proved a loss of $4 million in past and future monetary damages and $700,000 in punitive damages. It also allowed T4K to "claw back" half of the salaries paid to the individual defendants during the three years they defrauded their former employer (totaling $181,370 from Sobrino-Sanchez and $321,622 from Santoro). It also froze $331,000 in each of the individual's bank accounts to be paid over to T4K's legal counsel for fees and costs.

The defendants have already filed a Notice of Appeal, but considering the facts adduced at trial, it appears unlikely they will be able to whittle these amounts down significantly, if at all.

Lessons Learned

The lesson is that the risk is significant for former employees when they ignore obligations under a restrictive covenant agreement and their duty of loyalty. Likewise, the lesson for employers is that they should not enter into such agreements and then fail to monitor compliance by existing employees.

Pay close attention to those workers bound by such an agreement (or even those who are not, as the duty of loyalty applies broadly to most employees) who may be disgruntled, disruptive, or unusually argumentative. They may have decided to help themselves to the company's property.

Conclusion

For further information, contact your Fisher Phillips attorney, the author of this Insight, or any attorney in our Employee Defection and Trade Secrets Practice Group. We will continue to monitor developments impacting employers, so make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information direct to your inbox.

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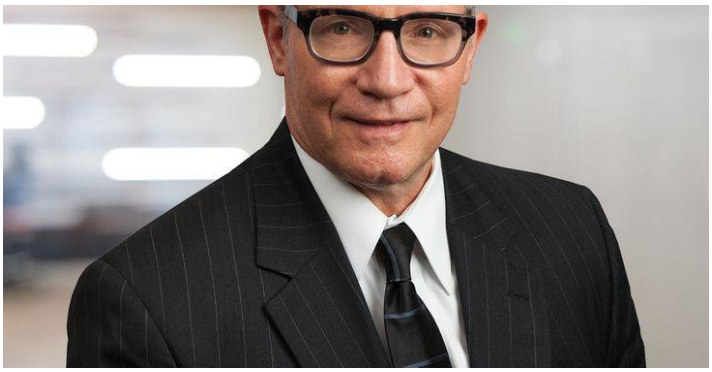

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