

A Costly Change: Violation Of a Non-Solicitation Clause Results In a Multi-Million Dollar Award

Insights

7.15.13



A recent ruling entered in Pennsylvania state court is a stark reminder to employers and employees about the dangers associated with violating post-employment restrictive covenants such as non-compete and non-solicitation provisions. The case, captioned as B.G. Balmer & Co. Inc. v. Frank Crystal & Co., centered around the question of whether a group of insurance brokers violated the non-solicitation clause in their employment agreements with Balmer. The group of departing employees first began to consider switching insurance brokers from Balmer to Crystal when they individually met with a recruiter in May 2003. Only a few months later, in July 2003, the group of employees all resigned from Balmer on the same day in order to start working for Crystal. Subsequent to their collective departure, approximately twenty clients switched insurance brokers from Balmer to Crystal.

Balmer filed suit alleging the twenty clients switched insurance brokers as a result of the employees' breaches of the non-solicitation clauses in their employment agreements. After a preliminary injunction was granted in Balmer's favor by the trial court and upheld on appeal by the Pennsylvania Superior Court, the case proceeded to a bench trial on the issues of liability and damages. At trial, Crystal and the employees argued the clients chose to switch insurance brokers on their own volition, and not due to improper solicitation. Balmer, not surprisingly, painted a far

on their own volition, and not due to improper solicitation. Balmer, not surprisingly, painted a far more negative picture of the employees' actions. In particular, according to Balmer, the former employees engaged in a calculated and concerted effort to disrupt its business by resigning on the same day and attempting to induce a number of clients to switch insurance brokers. After a multi-day bench trial in 2011 and the filing of post-trial motions, the judge rendered his decision on June 28, 2013.

The judge concluded Crystal and the employees should be held liable on nine out of the eleven claims asserted in Balmer's complaint. The judge emphasized the discovery record was "replete with instances" where the employees violated their contractual obligations to Balmer including the non-solicitation provision. Based upon this finding, the judge not only awarded Balmer \$2.4 million in compensatory damages, but also \$4.5 million in punitive damages. The \$6.9 million award is one commands attention from employers who hire employees from competitors.

The lessons that can be learned from the Balmer case are clear and unmistakable. While employees may freely switch employment positions, they cannot do this in a manner that violates their contractual and common law obligations to their former employer. An individual places himself or herself in peril of being named in a lawsuit by, for example, attempting to solicit clients of a former employer shortly after changing jobs or partaking in a cooperative effort to disrupt the business practices of a former employer. This type of conduct will not only likely anger the former employer, but in many instances will also violate contractual and/or common law duties owed to the former employer. The better course of action, in many instances, is to speak with an attorney and other professionals prior to changing a job to develop a strategy for making the transition as seamless as possible. This is particularly important where the employee has entered into an employment contract containing post-employment restrictive covenants. In short, there is a right way and wrong way to switch employment positions, and unfortunately for the insurance brokers in the Balmer case they appear to have chosen the latter thereby exposing themselves and their new employer to a multi-million dollar damages award.

Greg Hanscom is an Associate Attorney in the Employee Defection & Trade Secrets Practice Group at Fisher Phillips. To receive notice of future blog posts either by Mr. Hanscom or other member of the Practice Group, you may subscribe to this blog's RSS feed or [follow Greg on LinkedIn](#) or Fisher Phillips on Twitter at @labor_attorneys.