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Court Enforces Noncompete Against Independent Contractor

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A noncompete and nonsolicit agreement will be enforceable against three independent contractors who were trained by and worked for a public adjustment company but began operating their own business, the state Superior Court has ruled.

On March 18, a unanimous three-judge panel of the court upheld a Bucks County Court of Common Pleas decision finding that the restrictive covenants in the independent contractor agreements protected a legitimate business interest and were enforceable.

Judge Anne E. Lazarus, who wrote the eight-page memorandum opinion in Metro Public Adjustment v. Parker, adopted the reasoning of trial court Judge Alan M. Rubenstein, who found that the covenant was tailored to protect a legitimate business interest.

"The covenant not to compete within the independent contractor agreements is designed to prevent an independent contractor from hijacking the training and experience garnered while affiliated with Metro [Public Adjustment Inc.] and utilizing it to create their own business to directly compete with Metro," Rubenstein said. "Indeed, this precise situation occurred in this case."

According to Lazarus, Matthew T. Parker, Eugene Houck and Christine Houck were all hired by Metro Public Adjustment, a network marketing company that recruits people to become licensed to perform public adjustment services for insurance claims. The company operates in 48 states with offices in five states. The company is based in Pennsylvania and has 13 offices in the state, Lazarus said.

Parker and the Houcks all signed independent contractor agreements with Metro. The agreements stated, in part, that the independent contractors could not compete with Metro during the duration of the agreement and for two years after.

According to Lazarus, Eugene Houck rose to the level of executive vice president with Metro and was an instructor for the company's training program. Christine Houck worked with Eugene Houck to develop his team, and Parker worked as a licensed public adjuster.

In June 2013, Metro found out that the Houcks and Parker had formed their own public adjusting company, Venture Public Adjusting, which had been incorporated in March 2013.

According to Lazarus, the Houcks and Parker sought adjusters working in Metro's territory, advertised in its business areas and used the training and experience they gained at Metro to recruit new clients.

Metro sought a preliminary injunction enforcing the restrictive covenant. Parker and the Houcks argued that the company could not prove it was harmed by Venture, nor that the terms of the agreement were reasonably necessary for Metro's protection. They further argued that there was no employment relationship between them and Metro.

The trial court granted the plaintiff's injunction, holding the Houcks and Parker were prohibited from working as public adjusters in Pennsylvania, New Jersey, Maryland, Illinois and Colorado.

On appeal, the defendants argued that the covenant was unreasonably restrictive, that no business interest was compromised, and that the harm to their business outweighed the alleged harm to Metro.

However, in his Rule 1925(a) opinion, Rubenstein said the reason behind the restrictive covenant included "the same rationale present in any traditional employer/employee relationship."

According to Rubenstein, the state Supreme Court's 1976 decision in Piercing Pagoda v. Hoffner and the state Superior Court's 1987 decision in Quaker City Engine Rebuilders v. Toscano were applicable to the case.

"It is clear from Piercing Pagoda and its progeny that the restrictive covenant contained within all three defendants' independent contractor agreements is sufficiently related to a 'contract for employment,' and thus, it is valid and enforceable against defendants," Rubenstein said.

Rubenstein further said that Metro had a clear interest in protecting its business

model and investment of providing specialized training to independent contractors.

"Metro provided the tools to be successful in the industry, including basic and advanced training, as well as their proprietary information regarding the best way to maximize profits on a claim," Rubenstein said. "All three defendants were very successful, no doubt due to the opportunity, training and experience provided to them by Metro."

In her opinion, Lazarus noted Rubenstein's findings of fact, and said the court would not interfere with his decision.

Plaintiffs attorney Michael Dubin of Semanoff Ormsby Greenberg & Torchia and defense counsel Andrew W. Bonekemper of Fox Rothschild in Blue Bell, Pa., did not return calls for comment.

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