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STATE OF MICHIGAN
IN THE 14TH CIRCUIT COURT FOR THE COUNTY OF MUSKEGON
BUSINESS COURT DIVISION

JANIS-SHUNTA INSURANCE
AGENCY, INC.

Plaintiff,

v

MICHAEL OLAH and ANCHOR
INSURANCE GROUP, INC. d/b/a
JIM MINES AGENCY,

Defendants.

File No. 12-48573-CK

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OPINION

Discovery in this case ended on March 5, 2013, and the Court is not aware of any material facts that have not already been disclosed in the case file. Both Defendants have filed Motions for Summary Disposition, and the Court has heard oral arguments as to those motions. This Opinion renders the Court's Decision on those Motions for Summary Disposition, pursuant to MCR 2.116(C)(10).

In this matter, the Defendant Michael Olah worked at least since 2003 as an employee of the Plaintiff, the Janis Shunta Insurance Agency, Inc., as an insurance

agent. In early August of 2012, Michael Olah left his employment with the Janis Shunta Agency, and on August 8, 2012, became employed as an insurance agent with the Defendant Anchor Insurance Group, Inc., (Anchor) which also does business as the Jim Mines Agency.

During the course of his employment with the Plaintiff, Michael Olah signed an employment agreement on May 13, 2003. In Paragraph 7 of that agreement, entitled "Non-Compete and Confidentiality," the following relevant language to this lawsuit is found:

"For a period of three (3) years after termination of employment with JSIA for any reason, Employee agrees not to:

(1) Solicit or accept insurance accounts being serviced by JSIA, including but not limited to any renewals or expirations from JSIA Accounts or Accounts obtained as a result of (b) knowledge of prospective insureds which Employee acquired during employment with JSIA, or

(2) Attempt to hire or entice away any employee of JSIA or induce any employee to terminate his or her employment with JSIA.

At the outset the Court notes that the Defendant Anchor Insurance Group/Jim Mines Agency was not a party to that Employment Agreement. The Court also notes that the characterization of Paragraph 7 as a non-solicitation provision is more accurate than a non-competition restriction.

When the Defendant Olah began his employment with the Defendant Anchor, he informed Anchor of the non-solicitation clause of his Employment Agreement with the Plaintiff, and the Plaintiff also notified Anchor of the existence of that non-competition provision. Anchor instructed Olah to comply with the non-solicitation requirement. Since that time, a few policy holders from the Plaintiff's agency have transferred their insurance business to Anchor. However, discovery has not shown that Olah solicited or accepted those insurance accounts in violation of the non-solicitation provision. To the

contrary, at least four of those customers have filed affidavits stating that neither Olah nor Anchor solicited them or contacted them for their insurance business.

There is also no evidence to show that Olah has breached any confidentiality provision of his Employment Agreement with the Plaintiff.

The core issue in this case is the meaning of the non-solicitation provision of the Employment Agreement. The appellate cases are legion that when a document is clear on its face and within its four corners, extrinsic evidence is not admissible concerning its construction, except in cases of fraud or mistake, which are not present here.

In this case, there is no evidence that Olah solicited or accepted insurance accounts from his former employer, nor that he or Anchor used confidential information from his former employer to do so. In a previous opinion, on October 12, 2012, Judge Graves found that the public announcement that Olah had joined Anchor did not constitute solicitation.

The Plaintiff argues that Defendant Anchor is in effect acting as Olah's agent in soliciting and accepting insurance clients from the Plaintiff. However, there is no evidence to show that Olah is involved in directing or otherwise guiding Anchor in a principal-agent relationship.

For the reasons and legal authority cited in Defendant Anchor's brief in support of its motion for summary disposition, the Court does not find the Plaintiff's claim of tortious interference with the Employment Agreement meets the necessary standards to have merit.

The Court also finds that the Plaintiff's claim of unjust enrichment does not have merit. Defendant Anchor was not a party to the Employment Agreement, and has the

right to compete freely in the marketplace against the Plaintiff as long as its employee Olah does not violate the non-solicitation and confidentiality provisions.

The Plaintiff's position is that an employer of Olah could not accept a former customer of the Plaintiff. That position goes beyond the clear language of the employment contract, and would present an unreasonable restraint upon both Olah and Anchor. In essence, the Plaintiff argues that any agency where Olah would work would be prohibited from accepting any former insurance accounts from the Plaintiff's agency, even if those customers voluntarily and without solicitation change agencies, and even if Olah receives no commission or compensation from those accounts. That position is not supported by the law or by the Employment Agreement itself. Even if the Plaintiff were confining its claim only to accounts personally serviced by Olah while employed by the Plaintiff, Anchor may accept those customers unless Olah has violated the employment agreement with the Plaintiff.

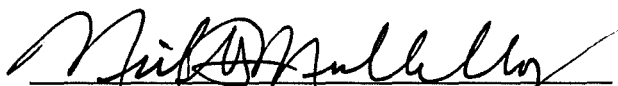
The Plaintiff is not entitled to injunctive relief per Judge Graves' earlier Opinion. Any damages sustained by the Plaintiff are not irreparable and would be compensable by monetary damages.

For all of the above reasons, the Court finds that there is no genuine issue of material fact and grants the Motion for Summary Disposition of the Defendants. The Court further finds the Plaintiff's claim not to have been frivolous, and denies both Defendants' requests for sanctions against the Plaintiff under MCR 2.114 and MCL 600.2591.

An order shall be prepared and submitted in accordance with this Opinion and Michigan Court Rules.

As guidance for the parties this decision finds that Olah has not breached the employment contract with the Plaintiff as of this time. However, the employment contract remains in effect until its expiration.

March 11, 2013



Hon. Neil G. Mullally
Judge 14th Circuit Business Court