

The End of Noncompetes? Defendants Win—While FTC Proposes Change

By Emily Cousins

January 31, 2023



(L-R) James M. Moriarty of Zeisler & Zeisler and Sheppard Mullin's Robert S. Friedman, Joshua Schlenger and Meghan M. Stuer.

Sheppard Mullin New York attorneys Robert S. Friedman, Joshua Schlenger and Meghan M. Stuer and Zeisler & Zeisler Connecticut attorney James M. Moriarty secured a win for Presidio Networked Solutions, the defendant in a trade secrets and noncompete case filed in the U.S. District Court of Connecticut.

Eastern Computer Exchange, the plaintiff, alleged that the defendants, Austin King and Peter Bonaventura, breached their employ-

ment agreements by working for Presidio and sharing trade secrets. The plaintiff defined Presidio as a competitor, and claimed more than \$3 million in damages, according to court documents.

The employment agreements stipulated that former employees cannot work for a competitor or "solicit the trade or patronage of any customers or prospective customers or suppliers of Eastern," according to a court ruling.

Both defendants denied that they violated their employment agreements.

The court also denied the plaintiff's motion for preliminary injunction, stating that Eastern had not proved misappropriation of trade secrets or irreparable harm.

On Jan. 19, the defendants filed a motion to compel the plaintiff to produce evidence supporting the allegations. However, on the eve of the hearing, Eastern stipulated to a dismissal of the case with prejudice.

FTC Proposal

The win by Presidio comes shortly after the Federal Trade Commission proposed on Jan. 5 a rule to ban noncompete clauses. If the rule is implemented, it could change the manner of lawsuits involving noncompete clauses.

"The freedom to change jobs is core to economic liberty and to a competitive, thriving economy," said FTC Chair Lina M. Khan in a press release. "Noncompetes block workers from freely switching jobs, depriving them of higher wages and better working conditions, and depriving businesses of a talent pool that they need to build and expand. By ending this practice, the FTC's proposed rule would promote greater dynamism, innovation, and healthy competition."

David Slossberg of Hurwitz, Sargarin, Slossberg & Knuff, an expert in business liti-

gation, said employees wouldn't be restricted when changing jobs, but employers would have to find new ways to protect trade secrets.

The FTC is still taking public comments on the rule and is considering options such as whether to exempt franchises or treat senior executives or higher-paid employees differently, Slossberg said.

"There are some folks who are suggesting that perhaps the Federal Trade Commission wouldn't have the legal authority to regulate this," Slossberg said. "Whatever the Federal Trade Commission does, my guess is it's going to end up in the courts."

Slossberg said that there is uncertainty in the law about noncompete clauses regarding reasonable duration and geographic restriction. Remote work and multidistrict businesses have also complicated the use of noncompete clauses, and more rules through the FTC or legislation could help employers and employees have clear expectations, Slossberg said.

"The rule could be very clear about what's acceptable so that you're taking a little bit out of the discretion of the court," Slossberg said. "Then people can plan ... and go into a job with eyes open."