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No ‘Thank You’: In Morgan Stanley setback, judge won't extend advisor TRO, On Wall Street Financial Planning, ft. Nancy Henrickson

Nancy Henrickson, partner at Kaufman Dolowich & Voluck in Chicago, was quoted in an article written by Andrew Welsch on August 8, 2019 published in On Wall Street/Financial Planning.

A federal judge declined to extend a temporary restraining order against David Sayler, whose thank you cards to clients were a focal point in Morgan Stanley’s argument that he had violated non-solicitation agreements. Sayler left the wirehouse in June to join UBS. He denied the allegations, according to court records.

After hearing arguments from both sides, U.S. District Judge Ann Aiken, who had initially granted the firm’s request for a temporary restraining order against Sayler, concluded there were “serious questions” about the merits of the case. Morgan Stanley “failed to clearly establish that it will suffer irreparable harm in the absence of further injunctive relief,” she wrote in her July 31 decision.

A FINRA arbitration case initiated by Morgan Stanley is still pending.

The judge’s reasoning could influence future legal battles over alleged non-solicitation violations, says Nancy Hendrickson, an attorney at law firm Kaufman Dolowich & Voluck, and who is not affiliated with the case.

“This was decided on a legal argument that has universal application. No matter what the facts are, this is a good argument for defendants,” she says.

In these types of TRO cases, it’s necessary to demonstrate to the court there is no way to quantify the harm allegedly being wrought by the defendant, says Hendrickson. “You have to show that money won’t solve your problem.”

And putting an injunction in place against an advisor is a pretty dramatic remedy, Hendrickson says.

Brokerages, of course, can tally client accounts down to the penny and can easily track how many assets, if any, have followed an advisor to a competitor’s firm.

“Yes they may lose clients, but that the end of the day, you can put a dollar figure on it, is essentially what [the judge is] saying,” Hendrickson says.

In particular, Hendrickson points to a line that Aiken included in her ruling that reads: “Additionally, ‘[c]ourts have become disinclined to find irreparable, incalculable harm from financial advisors' departures.’”

That line, Hendrickson says, “gives renewed vigor to arguments defendants have been making for decades.”

But, she cautions, brokers shouldn’t take this as a Get Out of Jail Free card. “This doesn’t give you license to lie, cheat and steal as you walk out the door. You still need to be squeaky clean,” Hendrickson says.

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