

Case Study:

Enforcing a non-compete agreement with a former employee



When David Baker resigned from **ARS Services**, an emergency restoration contractor doing business in Massachusetts, Rhode

Island, Connecticut and New Hampshire, he was bound by a non-compete agreement with the company. It said that Mr. Baker could not work in the field of disaster restoration for one year on any project within 40 miles of any of ARS's six offices.

Despite this, Mr. Baker soon began working for one of ARS's direct competitors, Harvey Remodeling, as a sales manager in its emergency restoration operation. His new job brought him into direct contact with the insurance adjusters and others with whom he had developed and furthered relationships while employed by ARS – business development contacts on whom ARS depends in its highly competitive market.

The Representation

ARS turned to Joe Bierwirth, a litigation attorney with Hemenway & Barnes, for help. Mr. Bierwirth filed for a preliminary injunction in Middlesex Superior Court, arguing that Mr. Baker's activities as sales manager with Harvey Remodeling's Restoration Division breached his non-compete.

Mr. Bierwirth showed the court how ARS had invested in Mr. Baker's professional development and sales efforts while he was an employee. The company, according to Mr. Bierwirth, encouraged Mr. Baker to

socialize and otherwise spend time with referral sources for emergency restoration work, people with whom he was now actively developing work for an ARS competitor – a clear violation of his non-compete.

The Decision

The court agreed and granted the preliminary injunction on Feb. 21, 2012. Judge Thomas Murtagh of Middlesex Superior Court found that "ARS has demonstrated that the enforcement of the Agreement is necessary to prevent it from suffering irreparable harm. If Baker is allowed to continue work ... for Harvey Remodeling's Restoration Division, ARS faces the distinct possibility that it will lose its goodwill with its customers and risk losing those customers to Harvey Remodeling."

The decision held that Mr. Baker could not be employed by Harvey Remodeling in its restoration division and that he could not in any other way be employed in disaster restoration work for any other company within the non-compete's geographic area.

The case is titled *ARS Services, Inc. v. Baker, et al.*, Middlesex Superior Court, Civil Action No. 12-00105.

Contact:

Joseph L. Bierwirth
617-557-9728
jbierwirth@hembar.com

Copyright © 2012 Hemenway & Barnes LLP

This advisory is provided solely for information purposes and should not be construed as legal advice with respect to any particular situation. This advisory is not intended to create a lawyer-client relationship. You should consult your legal counsel regarding your situation and any specific legal questions you may have.



**Hemenway
& Barnes** LLP