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Morgan Stanley Disses Former Broker's Career in New TRO Suit

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In a new twist on an increasingly common theme, Morgan Stanley is seeking a court order to prevent a former broker in Florida from inviting clients to his new registered investment advisory practice.

In requesting a restraining order and damages in a lawsuit filed on Monday, the New York broker-dealer both denigrated Daniel J. Abel's abilities as a broker and argued that the former employee who resigned on January 12 before a holiday weekend remains subject to a joint production agreement that includes sanctions for using confidential information belonging to the firm.

"Despite the fact that Defendant—prior to his resignation—transitioned from being a financial advisor to being a support staff member, he remains subject to this bona fide agreement, including its restrictive covenants, because it was never revoked upon his transition from financial advisor to support staff within the Morgan Stanley office," says the complaint filed in the Jacksonville division of of U.S. District Court in Florida.

The case is the latest example of Morgan Stanley's intent to hold former employees to the letters of their employment and related contracts since it withdrew from the Protocol for Broker Recruiting at the end of November. The documents impose one-year non-solicitation periods and give the firm consent to seek injunctions and restraining orders.

Morgan Stanley last Wednesday filed a similar lawsuit in Indiana, after successfully being granted restraining orders in three other cases.

The facts of each case differ, and brokers and lawyers are studying them to suss out whether the firm will pursue former employees who dot their legal "i"s and cross the correct "t"s. The Protocol permits brokers moving among signatories to the pact to bring five pieces of customer contact information without fear of reprisal.

"Morgan Stanley expects all former employees to comply with their legal and contractual obligations to the Firm," a spokeswoman wrote in an email.

Abel, who joined Morgan Stanley's Ponte Vedra Beach office in March 2014 after 11 years at Merrill Lynch and earlier at Morgan Stanley Dean Witter, did not respond to messages left with him at his residence and at his new registered investment advisor firm, Abel Wealth Management. His lawyer, Ronald P. Angerer in Jacksonville, declined to comment.

While the lawsuit mirrors others in which Morgan Stanley said it will suffer "irreparable harm" by former employees' use of confidential client information and alleges illegal downloading of data onto outside servers and databases, it includes some demeaning case-specific facts.

"Defendant was initially employed as a Financial Advisor, however, after an unsuccessful transition, Abel became a member of the support staff," says the complaint filed on Morgan Stanley's behalf by lawyers Michael Taafe and Michael Bressan of Shumaker, Loop & Kendrick in Sarasota, Florida.

"On January 12, 2018, Defendant abruptly resigned from Plaintiff and created his own independent competing firm….designed to allow him to unfairly compete. Defendant slid his resignation under his manager's office door when the manager was out of the office and such resignation was not found until after the holiday weekend. This allowed Defendant to wrongfully compete with Morgan Stanley in violation of his obligations while the firm was unaware that he resigned."

Employment lawyers and headhunters often counsel brokers leaving for new positions to leave over holiday weekends so they can reach former clients before their colleagues make calls to retain them.

The lawsuit also notes that Abel posted his plans and his new phone number at Abel Wealth Management on LinkedIn in a further attempt to reach clients who it said keep “an estimated $18 million in combined assets” at the firm.

“After 15 years of working for Big Wall Street Firms, today I left Morgan Stanley to open my own practice as an Independent Investment Advisor Representative,” Abel’s LinkedIn posting says. “I would love to tell you more about it.”

In an affidavit accompanying Morgan Stanley’s complaint, Ponte Vedra Beach branch manager Albert S. Toto said Abel had contacted some clients he was servicing ahead of his resignation.

The court complaint notes that another advisor, Michelle Paul, “took Abel under her wing as support staff and paid him above market rate.”

Citing four counts of wrongdoing, including alleged violation of Florida’s Deceptive and Unfair Trade Practices Act, the lawsuit seeks temporary and preliminary injunctive relief, unspecified damages and return of proprietary information in the possession of Abel and others acting in concert with him.

As in its previous actions, Morgan Stanley filed an arbitration complaint with the Financial Regulatory Authority seeking longer-term relief, according to a footnote in the lawsuit complaint.

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