

Morgan Stanley Wins Another Restraining Order Against Former Broker

January 24, 2018

by [Mason Braswell](#)

A federal judge in Jacksonville, Florida, has granted Morgan Stanley its emergency motion to prevent a former employee who opened an independent advisory firm two weeks ago from contacting former clients, at least the fourth temporary restraining order the firm has won from courts since leaving the Protocol for Broker Recruiting almost two months ago.

In an [innuendo-laced filing late Monday afternoon](#) that questioned former employee Daniel J. Abel's skills, Morgan Stanley alleged that he contacted at least five former clients using confidential contact information and failed to comply with two requests it sent him to return the information.

U.S. District Judge Marcia Morales Howard—a former employment lawyer nominated to the federal bench in 2007 by President George W. Bush—granted the temporary restraining order and, unlike judges in previous cases, wrote a 14-page decision that some lawyers believe could be cited in other cases.

Citing federal rules of civil procedure and Florida Local Rule 4.05, the judge ruled that Abel's apparent solicitation obviates the need for a hearing on whether the restraining order, which is effective for two weeks, should be granted "due to the imminent threat of irreparable injury" to Morgan Stanley.

She did not address issues of customer choice that lawyers and headhunters who represent departing brokers often raise in these cases, but denied Morgan Stanley's request for preliminary "injunctive relief," noting that Abel has not presented his case.

"On the limited record here, the Court finds that the threatened injury to Morgan Stanley, if this request is not granted, outweighs any potential damage this limited relief would cause to Abel," she wrote. "[T]he entry of a temporary restraining order in this case would serve the public's interest in protecting legitimate businesses from the misappropriation of confidential information and resources, as well as promote the protection of contractual rights."

The judge's ruling means that the case can now proceed to a Finra arbitration hearing on an expedited basis, under the regulator's rules.

Abel's Jacksonville-based lawyer Ronald Paul Angerer declined, through an assistant, to comment.

A Morgan Stanley repeated the firm's earlier statements that it expects all employees "to comply with their legal and contractual obligations to the firm."

The judge's written decision gives Morgan Stanley ammunition for potential future restraining order requests, said Barry Lax, a securities employment lawyer in New York who often represents brokers.

"That's something that Morgan Stanley is definitely going to point to because it's stronger precedential value than just a stipulated agreement," Lax, who was not involved in the case, said. "It will have precedential value, especially in the jurisdiction where they got the TRO."

Headhunters and lawyers have said that some courts are more friendly to investors than others, noting that TROs are much more difficult to achieve in California.

The early wins for Morgan Stanley in part represent weak cases on the part of the departing brokers, who clearly appeared to have violated elements of their employment and inherited account contracts and who consented in contracts to the firm's right to seek restraining orders and relief, said George C. Miller, a partner with Shustak Reynolds & Partners, PC, in San Diego.

"Again we had a financial advisor or registered person leave the firm and there's at least allegations that he did things he probably shouldn't have done," said Miler, who was not involved in the case. "To me, it really highlights the necessity if you're going to make a transition in today's environment of consulting with an attorney beforehand."

-Jed Horowitz contributed to this story.

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