

Judge Hands Morgan Stanley Another TRO Win, Hands Off to Finra

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by [Mason Braswell](#)

(Updated to reflect postponement of Finra hearing, pending mediation.)

A federal judge in Florida has granted Morgan Stanley another victory in preventing a broker from calling former clients at his new firm, lengthening a temporary restraining order and turning the case over to Financial Industry Regulatory Authority arbitrators.

U.S. District Court Judge Marcia Morales Howard ruled on Monday that Morgan Stanley “demonstrated good cause to warrant extending the TRO” against Daniel J. Abel, despite the broker’s request last week to deny the firm’s attempt to prevent him from contacting clients as it prepared its expedited arbitration case.

Abel, who [left Morgan Stanley on January 12](#) to start his own registered investment advisor firm, filed court papers last week arguing that the firm was [hypocritical](#) in arguing that he was violating non-solicitation agreements because it had encouraged him to solicit his old clients when he joined from Merrill Lynch in 2014. The Ponte Vedra, Florida-based advisor also said requests for a TRO should have been made in New York, where Morgan Stanley is based and where labor laws adhere to “a public policy in favor of free competition.”

Morales extended the TRO that was to expire today until February 20, saying arbitrators can now decide the merits of the arguments in hearings scheduled to begin on Thursday, February 8.

“[G]iven the complexity of the issues and the diametrically opposed positions of the parties, it is unlikely the Court would be able to enter a reasoned decision before the arbitration hearing,” Morales wrote. “[T]he FINRA hearing... will allow the parties to litigate the dispute in a full evidentiary hearing, including the calling and cross examination of relevant witnesses.”

Arbitrators approved by Finra “appear to be better suited to examine and resolve the issues than the judiciary,” she added.

On Wednesday, after Morales’ order, Morgan Stanley filed a notice stating the parties had agreed to stay those hearings pending mediation.

The Abel case is one of six in which Morgan Stanley has sought restraining orders, arguing that former brokers are violating their contracts by using “trade secrets” and confidential information to jump-start their practices at new firms. It has prevailed in four cases and lost one in which [brokers moved to Ameriprise](#)’s employee network. A [sixth case in Indiana is pending](#) as the firm and the former broker negotiate, according to a person close to the case.

Morgan Stanley has been aggressively seeking to retain clients of former brokers since its November [decision to leave the Protocol for Broker Recruiting](#).

In her decision on Monday, Morales dismissed Abel’s arguments that Morgan Stanley’s request for a restraining order would not have been granted in New York.

“It does not appear that application of New York law to Morgan Stanley’s ex parte request for temporary injunctive relief would have resulted in a different conclusion,” Morales wrote. “The Court finds that Morgan Stanley has demonstrated good cause to warrant extending the TRO for an additional 14 days.”

Ronald P. Angerer, Abel’s lawyer, declined to comment.

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