

To commence the statutory time period of appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

FILE AND ENTERED
ON 1-24 2003
WESTCHESTER
COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COMMERCIAL DIVISION, WESTCHESTER COUNTY

Present: HON. KENNETH W. RUDOLPH
Justice.

-----X

MILBRANDT & CO., INC.

: Index No. 21719/02
Motion Date: 1/3/03

Plaintiff,

-against-

: DECISION AND ORDER

JOHN W. GRIFFIN and JOHN M. GLOVER
AGENCY,

Defendants. :

-----X

The following papers numbered 1 to 4 read on this motion by plaintiff.

	<u>PAPERS NUMBERED</u>
Order to Show Cause/Affidavit (12/19/02)	1
Answering Affidavits, (Griffin 1/3/03, 1/10/03, Forlivio 1/3/03)	2
Reply Affidavit, Antoinette (1/10/03)	3
Memoranda of Law, (Glover 1/3/03, Griffin 1/3-1/10/03)	4
Oral Argument, 1/6/03	5

Upon the foregoing plaintiff, Milbrandt & Co., Inc., ("Milbrandt") by order to show cause returnable January 3, 2003, seeks to preliminarily enjoin defendants, John W. Griffin ("Griffin") and John M. Glover Agency ("Glover") from "soliciting or accepting... insurance business... from any insured or former insured... (of the plaintiff)... which the defendant, John W. Griffin, had contact or knowledge, directly or indirectly while an employee of the (plaintiff)" is decided as follows:

The plaintiff, by its President, Robert Antoinette, submits convincing evidence that the defendant Griffin executed an employment agreement dated December 26, 1995 which contains in part a non-competition agreement in the event of the employee's termination of employment voluntarily or involuntarily, with or without cause.

In part the agreement provides as follows:

"IX. NON-COMPETITION AND ESOP PLAN

It is recognized by the Producer that the continuation of the business relationships which the Producer will develop or with which he/she will come into contact while in the employ of the Agency are important to the Agency's future financial health.

The Producer, therefore, agrees that in the event his/her employment is terminated with the Agency for any reason, whether with or without cause, or whether by the Agency or by the Producer, he/she will not, directly or indirectly, whether as an individual, partner, shareholder, officer or director, consultant, independent contractor, or in any other form whatsoever, for a period three years following the termination of such employment, solicit or accept, directly or indirectly, insurance business of any form from any insured or former insured of the Agency with which the Agent had contact or knowledge, directly or indirectly, while an employee of the Agency."

The defendant, Griffin voluntarily terminated his employment by letter dated October 4, 2002. Griffin immediately "relocated" to the co-defendant, Glover.

The submission before this Court established that a large number of plaintiff's insurance accounts both immediately before and immediately after Griffin's resignation have appointed the defendant, Glover as broker of record.

Glover, by its President, John Forlivio, denies any knowledge of Griffin's non-competition agreement stating, in part:

"When Mr. Griffin became employed by Glover, Mr. Griffin advised that he was not subject to any restrictive covenants which would inhibit his ability to do business with his clients." (see Forlivio affidavit paragraph 1, dated January 3, 2003).

Griffin, referring to the clients of Milbrandt that he serviced states, in part:

"After October 8, 2002, upon learning that I no longer worked for Milbrandt, many clients asked me what they needed to do in order to continue having me service their accounts. I informed such clients that a change in their "broker of record" needed to be made, and assisted them in that change. I have provided service to many of these clients for 10 and in some instances more than 20 years. It is perfectly understandable that such clients would want me to continue providing insurance related services to them." (Griffin affidavit paragraph 4 dated January 9, 2003).

To obtain the drastic remedy of a preliminary injunction, a movant must demonstrate (1) a likelihood or probability of success on the merits, (2) irreparable harm if the injunction is denied, and (3) a balance of the equities in favor of granting the injunction (see, Aetna Insurance Co. v. Capasso, 75 NY2d 860; Grant Co. v. Srogi, 52 NY2d 496). "Preliminary injunctive relief is a drastic remedy which will not be granted 'unless a clear right thereto is established under the law and the undisputed facts upon the moving papers, and the burden of showing an undisputed right rests upon the movant'" (Nalitt v. City of New York, 138 AD2d 580, 581, quoting First National Bank v. Highland Hardwoods, 98 AD2d 924, 926).

The plaintiff, Milbrandt, has established the probability of success on the merits based upon the submissions and agreements before this Court. Irreparable harm resulting from the loss of its clients' present and future business will continue if the preliminary injunction is denied. The balance of the equities in granting the relief strongly favor the plaintiff (see, Laro v. Culkan, 255 AD2d 560; Eastern Business vs. Specialty, 292 AD2d 336; North Shore vs. Zeruos, 278 AD2d 210).

Upon the foregoing, it is

ORDERED, that the defendants, Griffin and Glover, are preliminarily enjoined from soliciting or accepting insurance business from any insured of the plaintiff who were customers of the plaintiff during the period of time Griffin was employed by the plaintiff, and it is further

ORDERED, that this temporary injunction shall not apply to individual blood relations of Griffin, and any person or entity who, without solicitation, by Griffin or Glover, request the services of defendants, and it is further

ORDERED, that on or before February 7, 2003 plaintiff shall post an undertaking in the amount of \$75,000.00 against which defendants shall recover its damages, costs and expenses in the event that it is later determined that the preliminary injunction should not have been issued; and it is further

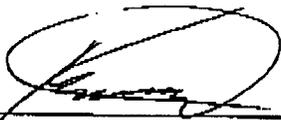
ORDERED, that proof of the posting of the aforesaid undertaking shall be served upon counsel for defendants and filed with this Court at its chambers so as to be received on or before February 10, 2003, and it is further

ORDERED, that the attorneys for all parties are directed to attend a preliminary conference at the Commercial Division, Westchester County, 140 Grand Street, 6th Floor, White Plains, New York on February 11, 2003 at 9:30 A.M.

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York
January 23, 2003

E N T E R,


HON. KENNETH W. RUDOLPH
Justice of the Supreme Court

TO: BONDI & IOVINO, ESQS.
Attorneys for Plaintiff
190 Willis Avenue
Mineola, New York 11501

DANIEL S. RONAN, ESQ.
Attorney for John W. Griffin
P.O. Box 25
246-03 Jamaica Avenue
Bellerose, New York 11426

GALLAGHER, HARNETT & LAGALANTE, LLP
Attorneys for The Glover Agency
380 Lexington Avenue, Suite 2120
New York, New York 10158