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SCANNED ON 11/3/2008

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: EDWARD H. LEHNER PART 19
Justice

Robert Half International Inc.

- v -

Amir Rand, Et Al.

INDEX NO. 107678/08

MOTION DATE

MOTION SEQ. NO. 1

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, It is ordered that this motion

motion is decided in accordance with accompanying memorandum decision

FILED
NOV 03 2008
COUNTY CLERK'S OFFICE
NEW YORK

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: OCT 30 2008

J.S.C.

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 19

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ROBERT HALF INTERNATIONAL INC.

Plaintiff,

Index No.
107678/08

- against -

AMIR RAND; DYANE R. HANSEN; GOPAL M. PATEL; and ADDISON PROFESSIONAL FINANCIAL SEARCH, INC., d/b/a ADDISON SEARCH INC. and ADDISON SEARCH GROUP, INC.,

Defendants.

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EDWARD H. LEHNER, J.;

Before the court is a motion by plaintiff for various forms of injunctive relief against three former employees (the "Employees") and their current employer.

Each of the Employees signed a similar employment agreement on various dates between May 15, 2006 and July 31, 2006 (the "Agreement"), which provides that they are employees "At Will" and "may be terminated at any time for any reason or no reason." Their salaries were set at between $3750 and $4250 per month. The restrictive covenant therein provides, among other restrictions, that for a period of 12 months after termination of employment, the Employees "shall not ... be employed by ... any Competitor in any part of the area encompassed within a radius of fifty miles" from plaintiff's Manhattan office. The term "Competitor" is defined as "any executive recruiting firm, employment agency, temporary personnel service business

or other staffing service business engaged in whole or in part in any business conducted by the" plaintiff. The Agreement further provides that for the same 12 month period the Employees shall not "[s]olicit any Other Employee to either leave the employ of (plaintiff) or to become connected in any way with any Competitor." The term "Other Employee" is defined as any individual who "is employed or engaged" by plaintiff "or was engaged ... within six months prior" to the termination of employment of the Employees. For said 12-month period, the Agreement also provides that the Employees "shall not, directly or indirectly, on behalf of any Competitor, solicit the trade or patronage of any Customer or perform services for any Competitor." The term "Customer" is defined as any business for which the plaintiff "performs or has performed services in the course of its business within the twelve months preceding" the termination of employment.

Plaintiff is an professional staffing office that places persons as accountants, secretaries (tr. p. 4), financial personnel (tr. p. 6), engineers, lawyers (tr. p. 7), and bookkeepers (tr. p. 10). Since almost every business firm in the New York City area employs bookkeepers, accountants and/or secretaries, it is obvious that the restrictions in the Agreement are extremely broad and, in effect, prevent the Employees from now working in the New York City metropolitan area in their chosen vocation. Plaintiff acknowledges that if any past employee of plaintiff came to one

of the Employees for placement, that would not be a violation of the no-solicitation clause, but would be a violation of the prohibition against working for a competitive business (tr. pp. 19-20).

At oral argument the Employees agreed that while they are with their current employer they will not attempt to place any person they placed while employed by plaintiff (tr. p. 18). Since the Employees left the employ of plaintiff in February of this year, the 12 month periods referred to above will expire this coming February (tr. p. 20). Plaintiff acknowledged that to perform their jobs, the Employees did not require any expertise, it being agreed that one week of training would be sufficient to perform their assignments (tr. p. 25).

Regarding lists of candidates, it was admitted that one of the Employees (Gopal Patel) did take a list of 90 names, which has been returned without a copy having been made or the names memorized (pp. 22-23).

"The party seeking a preliminary injunction must demonstrate a probability of success on the merits, a danger of irreparable injury in the absence of an injunction and a balance of equities in its favor." [Nobu Next Door, LLC v. Fine Arts Housing, Inc., 4 NY3d 839, 840 (2005)].

In Columbia Ribbon & Carbon Manufacturing Co., Inc. v. A-1-A Computation, 42 NY2d 496 (1977), the court set forth the following principles with respect to the enforceability of restrictive covenants in employment agreements (p. 499):

> Since there are "powerful considerations of public policy which militate against sanctioning the loss of a man's livelihood," restrictive covenants which tend to prevent an employee from pursuing a similar vocation after termination of employment are disfavored by the law. Such covenants will be enforced only if reasonably limited temporally and geographically, and then only to the extent necessary to protect the employer from unfair competition which stems from the employee's use or disclosure of trade secrets or confidential customer lists. Thus, where the employer's past or prospective customers' names are readily ascertainable from sources outside its business, trade secret protection will not attach and their solicitation by the employee will not be enjoined.
>
> On the other hand, if the employee's services are truly special, unique or extraordinary ... injunctive relief may be available .... (citations omitted)

As stated in BDO Seidman v. Hirshberg, 93 NY2d 382 (1999), the above principles have been "strictly applied ... to limit enforcement of broad restraints on competition ... to the protection against misappropriation of the employer's trade secrets or of confidential customer lists, or protection from competition by a former employee whose services are unique or extraordinary" (p. 389). In Price Paper and Twine Co. v. Miller, 182 AD2d 748 (2nd Dept. 2002), the court stated that (p. 749), "[r]egardless of the existence of a restrictive covenant between an employee and former employer, courts disfavor any action which sanctions the loss of a person's livelihood ... (and) will not impede an employee's ability to compete with a former employer unless the evidence is clear and convincing that it is necessary to protect the trade secrets of the employer or that fraudulent methods were used by the employee .... See also, Reed Roberts Associates, Inc. v. Strauman, 40 NY2d 303 (1976); H&R Recruiters, Inc. v.

Kirkpatrick, 243 AD2d 680 (2nd Dept. 1997); Business Networks of New York, Inc. v. Complete Networks Solutions, Inc., 265 AD2d 194 (1st Dept. 1999); Natural Organics, Inc. v. Kirkendall, 52 AD3d 488 (2nd Dept. 2008).

As acknowledged by plaintiff, the services of the Employees (who, as aforesaid, only required one week of training for their positions) are not unique or extraordinary, and the court finds that the plaintiff has not shown that the Employees possess trade secrets or confidential customer lists of plaintiff.

Since plaintiff has not met any of the three prongs which are all necessary to be established in order to be entitled to the requested injunctive relief, its motion is denied except to the extent, referred to above, agreed upon at oral argument.

This decision constitutes the order of the court.

Dated: October 30, 2008

J.S.C.