

BLOGS

Post-Termination Injunctions: Noncompetes

Court Holds Former Franchisee in Contempt of Preliminary Injunction Enforcing Covenant Not to Compete

The United States District Court for the Northern District of New York recently imposed contempt sanctions against a former franchisee after finding the franchisee had willfully violated an earlier injunction requiring her to comply with post-termination covenants against competition and solicitation contained in her franchise agreement. *H&R Block Tax Servs. LLC v. Strauss*, 2015 U.S. Dist. LEXIS 87668 (N.D.N.Y. July 7, 2015). Gray Plant Mooty represents the franchisor in this case. The franchisee had agreed that, upon termination, she would neither solicit clients to whom her franchised business had provided tax return preparation services nor compete with H&R Block in the business of preparing tax returns for a period of one year within 45 miles of her former franchise territory. As previously reported in [Issue 190](#) of *The GPM Memorandum*, when the franchisee continued to compete against H&R Block and solicit its clients following the expiration of her franchise agreement, H&R Block obtained a restraining order and preliminary injunction prohibiting further breach of her post-termination obligations.

H&R Block subsequently learned that despite the entry of the injunction, the franchisee and her employees were continuing to prepare income taxes at various office locations within forty-five miles of her former franchise territory and to solicit clients in that area through newspaper advertisements and other means. H&R Block then moved for an order holding the franchisee in contempt of the injunction. In granting the motion, the court found that H&R Block had presented clear and convincing evidence of the franchisee's violation of the injunction, including that she had continued to prepare income tax returns at locations within forty-five miles of her former franchise territory, continued to display a sign in front of her office advertising tax services, and procured a newspaper advertisement touting those services after the injunction was issued. The court held that, based on those findings, a one-year equitable extension of the franchisee's covenants against competition and solicitation was necessary in order to effectuate the purpose behind the covenants and to give H&R Block an opportunity to establish a new office in the franchisee's former territory free from wrongful competition. In addition, the court awarded H&R Block damages in the form of royalties on the revenue received by the franchisee through her activities in violation of the court's injunction and attorneys' fees incurred by H&R Block in connection with its motion that the franchisee be held in contempt.

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