

**BLOGS**

Injunctive Relief

## Federal Court Enjoins Terminated Franchisee from Violating Restrictive Covenants, but Declines to Enforce Bond-Waiver in Franchise Agreement

A federal court in Washington has granted a preliminary injunction against a terminated tax preparation services franchisee, preventing it from operating a competing business and soliciting the franchisor's customers. *JTH Tax LLC (d/b/a Liberty Tax Service) v. McHugh*, 2020 WL 1689731 (W.D. Wash. Apr. 7, 2020). Plaintiffs Liberty Tax Service and SiempreTax+ operate thousands of tax preparation service centers nationally. Defendant Lorraine McHugh entered into a Liberty Tax Franchise Agreement in 2015, and ultimately operated the franchise through her business KVC. By spring 2019, McHugh had effectively abandoned the franchise and her Franchise Agreement was terminated by Liberty Tax. After termination, Liberty Tax discovered that McHugh was running a competing tax preparation service through KVC and soliciting former Liberty Tax customers in violation of the post-termination covenants in her Franchise Agreement. Liberty Tax filed suit and sought an injunction to enforce McHugh's Franchise Agreement and prevent her from further unlawful competition and solicitation of its customers.

The court concluded that McHugh likely breached or intended to breach valid and enforceable noncompetition, nonsolicitation, and nondisclosure agreements by operating a competing tax business within 25 miles of the former franchise and soliciting former franchise customers. The court concluded that the noncompetition provisions in the franchise agreement were appropriately limited in time and geography. Moreover, the provisions were not barred by Washington's recent anti-noncompete law, which went into effect on January 1, 2020, because they were contained in a franchise agreement rather than an employment contract. Liberty Tax made a sufficient showing of irreparable harm by arguing that McHugh's actions risked a loss of customer goodwill and damage to the franchise system, and the court concluded that the balance of harms and likelihood of customer confusion weighed in favor of equitable relief. Although the franchise agreement also provided a bond-waiver for injunctive relief, the court was not convinced that such a waiver was enforceable and therefore set a bond at \$100,000 to protect against the potential harm from the injunction if it were determined that McHugh was wrongfully enjoined.

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