

BLOGS

Post-Termination Injunctions: Noncompetes

Missouri Federal Court Enjoins Terminated Franchisees' Competing Businesses in Two H&R Block Cases

Judges in the United States District Court for the Western District of Missouri recently issued orders in two separate cases enjoining two terminated franchisees from operating competing tax-service businesses within 25 miles of their former franchise territory for a period of two years. *H&R Block Tax Serv., LLC v. Thomas*, 2018 WL 910170 (W.D. Mo. Feb. 15, 2018); *H&R Block Tax Serv. v. Frias*, 2018 WL 934901 (W.D. Mo. Feb. 16, 2018). In both cases, the terminated franchisees were operating competing businesses in violation of their franchise agreements' post-termination covenants against competition, and the franchisor brought motions for preliminary injunctions. Applying case law from H&R Block's previous successes in injunction cases, both courts easily found (a) a likelihood of success on the merits of the franchisor's claims, (b) that the temporal and spatial scope of the non-compete provisions were reasonable, (c) a threat of irreparable harm to the franchisor resulting from lost customers and an inability to re-establish a new franchise in the territory, (d) a lack of countervailing harm to the ex-franchisees, who only suffered self-inflicted harm, and (e) a public interest in enforcing the contractual noncompetition provisions.

But the courts diverged on whether the noncompetition provisions applied to certain relatives who had not signed the franchise agreements. In *Thomas*, the court summarily enjoined the ex-franchisees' family members, who were operating a competing taxservice business out of the same location as the former franchise office. The court in *Frias*, however, refused to enjoin the ex-franchisee's wife. Although the wife admitted she originally opened her business to send customers to her husband's H&R Block franchise, the court found she had done so before the franchise was terminated, not as a means to circumvent the post-termination covenant against competition. The court also found that evidence gathered by the franchisor's investigator failed to demonstrate that the ex-franchisee was participating in the operation of his wife's competing business. Although the court did not enjoin the ex-franchisee's wife from operating a competing business, it did find that the ex-franchisee's referral of customers to his wife's competing business was a violation of the anti-solicitation provision of his franchise agreement and ordered further briefing on whether the ex-franchisee's social media activities also violated the anti-solicitation provision of his agreement.

Related People

Maisa Frank

Partner

Washington, D.C.

202.295.2209

maisa.frank@lathropgpm.com