

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION**

|                               |   |                                 |
|-------------------------------|---|---------------------------------|
| RONALD F. KORECK and CITIZENS | : | APRIL TERM, 2008                |
| PUBLIC ADJUSTERS,             | : |                                 |
|                               | : | NO. 02149                       |
| Plaintiffs,                   | : |                                 |
|                               | : | COMMERCE PROGRAM                |
| v.                            | : |                                 |
|                               | : | Control Nos. 09040622, 09040682 |
| INSURANCE ADJUSTMENT BUREAU,  | : |                                 |
| INC.,                         | : |                                 |
|                               | : |                                 |
| Defendant.                    | : |                                 |

---

|                               |   |                  |
|-------------------------------|---|------------------|
| INSURANCE ADJUSTMENT BUREAU,  | : | APRIL TERM, 2008 |
| INC.,                         | : |                  |
|                               | : | NO. 02264        |
| Plaintiff,                    | : |                  |
|                               | : | COMMERCE PROGRAM |
| v.                            | : |                  |
|                               | : |                  |
| RONALD F. KORECK and CITIZENS | : |                  |
| PUBLIC ADJUSTERS,             | : |                  |
|                               | : |                  |
| Defendants.                   | : |                  |

**ORDER**

**AND NOW**, this 20<sup>th</sup> day of August, 2009, upon consideration of the Motion for Summary Judgment of Ronald F. Koreck and Citizens Public Adjusters (collectively “Koreck”), the Motion for Partial Summary Judgment of Insurance Adjustment Bureau, Inc. (“IAB”), the responses thereto, and all other matters of record, it is hereby **ORDERED** as follows:

1. Koreck’s Motion is **GRANTED in part**, and IAB’s claims for permanent injunction and declaratory judgment are **DISMISSED**.

2. **JUDGMENT** is **ENTERED** for Koreck and against IAB on Koreck's claim for declaratory judgment. The restrictive covenant in the parties' Employment Agreement is unenforceable as against Koreck.
3. IAB's Motion is **DENIED**.
4. IAB's claim for attorneys' fees, breach of contract, and tortious interference with contract are **DISMISSED**.
5. The parties' remaining claims for damages are **TRANSFERRED** to this court's Arbitration Program for resolution.

**BY THE COURT,**

---

**ARNOLD L. NEW, J.**

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION**

|                               |   |                                 |
|-------------------------------|---|---------------------------------|
| RONALD F. KORECK and CITIZENS | : | APRIL TERM, 2008                |
| PUBLIC ADJUSTERS,             | : |                                 |
|                               | : | NO. 02149                       |
| Plaintiffs,                   | : |                                 |
|                               | : | COMMERCE PROGRAM                |
| v.                            | : |                                 |
|                               | : | Control Nos. 09040622, 09040682 |
| INSURANCE ADJUSTMENT BUREAU,  | : |                                 |
| INC.,                         | : |                                 |
|                               | : |                                 |
| Defendant.                    | : |                                 |

---

|                               |   |                  |
|-------------------------------|---|------------------|
| INSURANCE ADJUSTMENT BUREAU,  | : | APRIL TERM, 2008 |
| INC.,                         | : |                  |
|                               | : | NO. 02264        |
| Plaintiff,                    | : |                  |
|                               | : | COMMERCE PROGRAM |
| v.                            | : |                  |
|                               | : |                  |
| RONALD F. KORECK and CITIZENS | : |                  |
| PUBLIC ADJUSTERS,             | : |                  |
|                               | : |                  |
| Defendants.                   | : |                  |

**OPINION**

Ronald F. Koreck (“Koreck”) and his new employer, Citizens Public Adjusters (“CPA”), filed the first of these consolidated actions against Koreck’s former employer, Insurance Adjustment Bureau, Inc. (“IAB”), seeking a declaratory judgment that the restrictive covenant contained in Koreck’s Employment Agreement with IAB was unenforceable. Koreck also asserted a claim against IAB under the Wage Payment and Collection Law for commissions due him but never paid, and for tortious interference with Koreck’s employment by a non-party. IAB filed the second of these actions seeking to enjoin Koreck from working for CPA, asserting

claims against Koreck for breach of contract and conversion, and asserting a claim against CPA for tortious interference with contract.

IAB filed a Motion for Preliminary Injunction and the court, after a hearing, entered an Order enjoining Koreck from disclosing any non-public information of IAB's to CPA, to the extent he possessed any such information. The court refused to enjoin Koreck from working for CPA. Koreck and CPA have moved for summary judgment holding the restrictive covenant unenforceable. IAB has cross moved for partial summary judgment awarding IAB its attorneys' fees and dismissing Koreck's claims for unpaid commissions.<sup>1</sup> These Motions are presently before the court.

IAB and CPA are competing public adjustment companies, which, for a fee, assist insureds in obtaining payment from their insurers due to a fire or other loss sustained at their residence or place of business. From January, 2002 through February, 2008, Koreck worked for IAB, and he now works for CPA, as a solicitor, *i.e.*, a salesman who appears at the scene of a fire or other loss and attempts to sign up the insured as a client for his employer. Koreck's written Employment Agreement with IAB contained the following relevant provisions:

For a period of three (3) years from the date of termination of his/her employment with Employer, Employee shall not, regardless of the length of employment under this Agreement, engage in any business in any manner similar to or in competition with Employer's business, as defined [below], in the geographical area within a seventy-five (75) mile radius from the City Hall of Philadelphia, Pennsylvania and the geographical area within a seventy-five (75) mile radius of any present or future office opened by Employer during the term of employment and the geographical area within a seventy-five (75) mile radius of Employee's home address, which on the date of the execution of this Agreement is 598 Belmont Ave. Southampton Pa 18966, and/or any future home address established by Employee during the course of his/her employment under this Agreement.

For purposes of this Agreement, Employee shall be regarded as engaging in a business in any manner similar to or in competition with Employer's business if

---

<sup>1</sup>There are disputed issues of fact regarding what, if any amounts are still due to Koreck, so summary judgment on this issue is denied.

directly or indirectly, he/she is engaged as a partner, owner, agent, representative, employee, officer, director, or stockholder of any business engaged in the business of adjusting and/or soliciting Losses as a public adjuster and/or public adjuster solicitor and/or insurance company staff adjuster and/or independent adjuster and/or otherwise, and/or any business in any manner related to the repair and/or replacement and/or reconstruction and/or emergency and/or temporary repair, boarding up, winterizing and/or other securing and/or protection of fire and/or weather damaged property and/or any property damaged by any other casualty loss, or such other business or businesses as Employer is engaged in during the period [the covenant is in effect] (the “Restrictive Covenant”).<sup>2</sup>

\* \* \*

If any action at law or equity is necessary to enforce or interpret the terms of this Agreement, Employee agrees to pay Employer reasonable attorneys’ fees, costs and disbursements with reference to said action in addition to any other relief and/or damages to which Employer may be entitled (the “Attorneys’ Fees Provision”).<sup>3</sup>

IAB claims Koreck’s employment with CPA violates the Restrictive Covenant and must be permanently enjoined.

In Pennsylvania, restrictive covenants are enforceable if they are incident to an employment relationship between the parties; the restrictions imposed by the covenant are reasonably necessary for the protection of the employer; and the restrictions imposed are reasonably limited in duration and geographic extent. Our law permits equitable enforcement of employee covenants not to compete only so far as reasonably necessary for the protection of the employer. However, restrictive covenants are not favored in Pennsylvania and have been historically viewed as a trade restraint that prevents a former employee from earning a living.

\* \* \*

Fundamental, then, to any enforcement determination is the threshold assessment that there is a legitimate interest of the employer to be protected as a condition precedent to the validity of a covenant not to compete. Generally, interests that can be protected through covenants include trade secrets, confidential information, good will, and unique or extraordinary skills. If the covenant is inserted into the agreement for some other purpose, as for example, eliminating or repressing competition or to keep the employee from competing so that the employer can gain an economic advantage, the covenant will not be enforced.<sup>4</sup>

---

<sup>2</sup> Employment Agreement, ¶ 11.

<sup>3</sup> *Id.*, ¶ 14.

<sup>4</sup> Hess v. Gebhard & Co., 570 Pa. 148, 157-163, 808 A2d 912, 917-921(2002).

In order to obtain its desired injunction, IAB must show it has a legitimate business interest in preventing Koreck's employment by CPA. In other words, IAB must show: 1) it imparted its trade secrets or other confidential information to Koreck; or 2) he can effect IAB's existing customer goodwill, or 3) he possess unique or extraordinary skill. IAB has failed to make this showing.

In IAB's response to Koreck's Motion, IAB pointed to the following testimony of record as proof it has a legitimate interest in preventing Koreck from working for CPA. IAB claims to have held bi-weekly sales meetings at which sales tactics and insurance related issues were discussed.<sup>5</sup> IAB's witnesses gave two examples of the kinds of information disseminated at these meetings: 1) information regarding the State Farm Premier Service Program;<sup>6</sup> and 2) the cause of winter water losses.<sup>7</sup> IAB cannot reasonably claim a proprietary interest in either of these subjects, which are necessarily known to people outside of IAB.

According to IAB, its experienced solicitors would take new solicitors into the field and teach them their "secret recipe" of successful sales techniques.<sup>8</sup> When pressed, IAB refused to elaborate further on its tactics and recipes because it claimed they were secrets.<sup>9</sup> There was no testimony that IAB imparted any particular sales secrets to Koreck. Instead, the testimony concerned information given to employees generally.<sup>10</sup> This scant, vague, evidence regarding

---

<sup>5</sup> Deposition of Ira Straff, pp. 71-76; Hearing Transcript, June 27, 2008, pp. 174.

<sup>6</sup> Deposition of Ira Straff, pp. 72-75.

<sup>7</sup> Hearing Transcript, July 9, 2008, pp. 54-56.

<sup>8</sup> Hearing Transcript, June 27, 2008, pp. 155-156.

<sup>9</sup> Deposition of Ira Straff, p. 76.

<sup>10</sup> See Deposition of Ira Straff, pp. 71-76; Hearing Transcript, June 27, 2008, pp. 174. One witness testified that Mr. Koreck attended sales meetings, but there was no testimony regarding the subjects discussed at the sales meetings he attended. See Hearing Transcript, June 27, 2008, pp. 174.

IAB's alleged proprietary sales information does not give IAB a legitimate business interest in preventing Koreck from working for IAB's competitor, CPA.

IAB also claims Koreck had access to IAB's confidential customer and pricing information and he misused this information in his attempts to compete with IAB for business. IAB's witnesses testified they introduced Koreck to IAB's contacts and to influential people in various communities who could help steer business to IAB.<sup>11</sup> There is no evidence Koreck has been able to retain or utilize such connections upon leaving IAB. IAB also claims to have provided Koreck with relevant references from its database when he needed to give them to a potential IAB customer.<sup>12</sup> There is no evidence he has used any such IAB references to solicit business for CPA.

An IAB witness testified Koreck was privy to IAB's discussions regarding pricing.<sup>13</sup> One of IAB's former customers testified Koreck approached her after a fire, as did other adjusters, and Koreck told her IAB would not go any lower than a 5% commission.<sup>14</sup> IAB did not offer any evidence that what Koreck said about IAB's pricing was true, so IAB has not established Koreck is misusing IAB's actual pricing information.

One of IAB's repeat customers testified Koreck called him on the customer's personal cell phone and attempted, but failed, to solicit the customer's business after he had suffered a loss.<sup>15</sup> Even if Koreck obtained this private phone number while employed by IAB, his "misuse"

---

<sup>11</sup> Hearing Transcript, July 10, 2008, pp. 19-21; Hearing Transcript, July 15, 2008, pp. 87-88.

<sup>12</sup> Deposition of Ira Straff, pp. 117-124. IAB did not give Koreck direct access to the database.

<sup>13</sup> Hearing Transcript, July 15, 2008, pp. 68-70.

<sup>14</sup> Hearing Transcript, July 9, 2008, pp. 159-161. He offered 4% on behalf of CPA, but she did not accept his offer.

<sup>15</sup> Affidavit of Richard Stiles.

of it once employed by a competitor is not sufficient to justify barring him from working as an insurance adjuster.

Since IAB has no legitimate business interests to protect with respect to Koreck, IAB is not entitled to an injunction prohibiting him from working for CPA. Since IAB's attempt to enforce the Restrictive Covenant has been unsuccessful, it is not entitled to its attorneys' fees from Koreck. Since the Restrictive Covenant is unenforceable, IAB's claims for breach of, and for tortious interference with, the Covenant are moot.

The maximum damages sought by Koreck on his wage claim is \$14,000. The parties' remaining damages claims, to the extent they are still viable, do not appear to exceed \$50,000. Therefore, this case is appropriate for the court's arbitration program.<sup>16</sup>

### **CONCLUSION**

For all the foregoing reasons, Koreck's and CPA's Motion for Summary Judgment is granted, and IAB's Motion for Partial Summary Judgment is denied.

**BY THE COURT,**

---

**ARNOLD L. NEW, J.**

---

<sup>16</sup> Pa. Civ. P. 1021(d).