

Tennessee Continues its Trend of Enforcing Non-Competes

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In a recent Tennessee case, *Fidelity Brokerage Services LLC v. Melissa Clemens*, No. 2:13-CV-239 (E.D. Tenn., Nov. 4, 2013), the Court entered a preliminary injunction prohibiting a former employee from soliciting customers or prospective customers she served while working for Fidelity, from soliciting Fidelity's employees, and from using Fidelity's confidential information.

As we [previously stated](#) regarding the *Dill v. Continental* decision, the *Fidelity* case serves as another reminder that reasonably drafted restrictive covenants are very much enforceable in Tennessee when reasonable under the circumstances.

Ms. Clemens was an account executive for Fidelity and managed at least 424 households representing over \$466 million in assets under Fidelity management. Over the course of her 12-year employment, Ms. Clemens signed two employment agreements meant to protect Fidelity's confidential information and prevent her from soliciting certain customers, prospective customers and employees.

In its decision, the Court made several noteworthy points:

- Even though the agreement did not identify a geographic territory from which Ms. Clemens was restricted, the customer-based restriction (prohibiting her from contacting customers and prospective customers she served) did not render the agreement unenforceable.
- Because Ms. Clemens was acting as “the face” of Fidelity, Fidelity had an interest in protecting the information generated from her relationships with its customers and potential customers.
- Mere telephone numbers and addresses for customers are generally not considered confidential in Tennessee. However, the “aggregate of information” which the employee had access to as a result of her employment with Fidelity, including customers' confidential, personal, and financial information, could be considered confidential.
- A factor to assess whether a preliminary injunction should be entered is whether the moving party would suffer from “irreparable harm.” Customer referrals and the loss of goodwill are difficult to calculate or prove, and may be used to assess the possibility of irreparable harm under Tennessee law.

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