

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

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U.S. DISTRICT COURT
WESTERN DISTRICT OF MICH.



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Gordon J. Quist
U.S. District Judge

AMERIPRISE FINANCIAL
SERVICES, INC.,

Plaintiff,

v.

ALBERT TYNES, ADOLPHO MONTESA
II, JEFFERY SOPER, AND HANTZ
FINANCIAL SERVICES, INC.

Defendants.

Civil Action No.

COMPLAINT

NATURE OF THE ACTION

1. Plaintiff Ameriprise Financial Services, Inc. (“Ameriprise”) brings this action for breach of contract, breach of the duty of loyalty and tortious interference with contract against Defendants Albert Tynes, Adolpho Montessa II, and Jeffery Soper (the “Managers”), and tortious interference with contract against Hantz Financial Services (“Hantz”).

2. These claims arise out of the events surrounding the Managers’ departure from Ameriprise and subsequent affiliation with Hantz. In the days before resigning from Ameriprise, while they were still employees of Ameriprise, the Managers, in violation of their contractual and legal obligations, made untrue statements about Ameriprise to current Ameriprise employees and attempted to recruit those employees to leave Ameriprise and join defendant Hantz.

3. After resigning from Ameriprise and to this time, the Managers have continued, in violation of their contractual obligations, attempting to induce Ameriprise employees to leave

Ameriprise and join Hantz. Hantz, knowing that the Managers were violating the noncompete provisions of their Ameriprise agreements, has wrongfully induced and assisted the Managers in their efforts. These wrongful acts have already resulted in major upheaval in Ameriprise's Okemos, Michigan office, and have cost Ameriprise at least three financial advisors as well as their clients. In light of these damages and the ongoing illegal behavior of the defendants, Ameriprise requests that this Court grant to Ameriprise temporary injunctive relief until the issue can be resolved before an NASD arbitration panel.

JURISDICTION AND VENUE

4. This Court has personal jurisdiction over the Defendants. The Managers reside in the Lansing, Michigan area and Hantz is headquartered in Southfield, Michigan and does business in Lansing, Michigan and the surrounding area. Venue is proper in this Court because Defendants' residence and business activities are located in and around this District. Plaintiff Ameriprise is a Delaware Corporation with primary place of business in Minneapolis, Minnesota.

5. This Court has subject matter jurisdiction over this matter under 28 U.S.C. § 1332, by reason of the diversity of citizenship of the parties and that, without granting injunctive relief, Ameriprise will suffer both irreparable harm and damages in an amount in excess of \$75,000, exclusive of interest and costs.

PARTIES

6. Plaintiff Ameriprise provides a variety of financial services to persons and entities nationwide. Until September 30, 2005, Ameriprise was known as American Express Financial Advisors ("AEFA"), at which point its name changed to Ameriprise. Since Ameriprise is the

name of the entity formerly known as AEFA, which was spun off from American Express, for ease of reference, references to AEFA shall be identified as Ameriprise.

7. Defendant Albert Tynes was an Ameriprise Platform 1 (“P1”) Financial Advisor Manager who was working in the Ameriprise office in Okemos, Michigan at the time of his voluntary resignation on April 21, 2006. Tynes is now affiliated with Hantz Financial Services, Inc.

8. Defendant Adolpho Montesa II was an Ameriprise P1 Financial Advisor Manager who was working in the Ameriprise office in Okemos, Michigan at the time of his voluntary resignation on April 21, 2006. Montesa is now affiliated with Hantz Financial Services, Inc.

9. Defendant Jeffery Soper was an Ameriprise Field Vice President who was working in the Ameriprise office in Okemos, Michigan at the time of his voluntary resignation on April 21, 2006. Soper is now affiliated with Hantz Financial Services, Inc.

10. Hantz Financial Services, Inc. is a wholly owned subsidiary of the Hantz Group and is a financial services firm headquartered in Southfield, Michigan.

FACTUAL ALLEGATIONS

I. The Managers’ Employment and Agreements with Ameriprise.

11. At the time of his resignation from Ameriprise, Albert Tynes was employed as a P1 Manager. The terms of his employment were controlled by a document titled “P1 Manager Rider,” which Tynes signed on July 20, 2005.

12. In Section II subdivision (a)(1) of Tynes’ P1 Manager Rider, Tynes agreed that he would not “Do any act to damage the goodwill of Company, an Affiliate or issuer.” For all Ameriprise agreements cited herein, “Company” refers to Ameriprise.

13. In Section II subdivision (a)(2) of Tynes' P1 Manager Rider, Tynes agreed that he would not "Encourage or induce any person to terminate an agreement with Company, an Affiliate or Issuer without Company's consent."

14. In Section II subdivision (a)(4) of Tynes' P1 Manager Rider, Tynes agreed that he would not "Employ or seek to employ any person who is at that time employed by Company or any other person selling or distributing Products and Services offered by the Company and its affiliates or otherwise directly or indirectly induce such person to leave his or her employment or Affiliation with Company without prior approval of the Company."

15. Section II of Tynes' Rider states that these restrictions apply both while the Rider is in effect and after the Manager's termination.

16. At the time of his resignation from Ameriprise, Adolpho Montesa II was employed as a P1 Manager. The terms of his employment were controlled by a document titled "P1 Manager Rider," which Montesa signed on April 16, 2006.

17. In Section II subdivision (a)(1) of Montesa's P1 Manager Rider, Montesa agreed that he would not "Do any act to damage the goodwill of Company, an Affiliate or issuer."

18. In Section II subdivision (a)(2) of Montesa's P1 Manager Rider, Montesa agreed that he would not "Encourage or induce any person to terminate an agreement with Company, an Affiliate or Issuer without Company's consent."

19. In Section II subdivision (a)(4) of Montesa's P1 Manager Rider, Montesa agreed that he would not "Employ or seek to employ any person who is at that time employed by Company or any other person selling or distributing Products and Services offered by the Company and its affiliates or otherwise directly or indirectly induce such person to leave his or her employment or Affiliation with Company without prior approval of the Company."

20. Section II of Montesa's Rider states that these restrictions apply both while the Rider is in effect and after the Manager's termination.

21. At the time of his resignation, Jeffery Soper was employed as a Field Vice President. The terms of his employment were controlled by a document titled "Field Vice President Agreement," which Soper signed on October 2, 2002.

22. In Section V, subdivision (e), of Soper's Field Vice President Agreement, agreed that for one year after his termination, in the geographic area 100 miles from the Okemos office, he would not:

Employ or seek to employ any person who is at that time employed by Company or any other person selling or distributing Products and Services offered by the company and its affiliates or otherwise directly or indirectly induce such person to leave his or her employment or Affiliation with Company.

Disparage Company, its Affiliates, employees or any other person selling or distributing Products and Service offered by the Company or its Affiliates, and/or Products and Services.

II. On April 20, the Managers' Announced Their Departure and, Despite Not Having Resigned from Ameriprise, Actively Recruited Ameriprise Financial Advisors to Join Hantz Financial

23. On Thursday, April 20, 2006, the Managers announced to the Ameriprise financial advisors at the Okemos office that there would be an announcement taking place at 8:00 P.M. that night. Word of this announcement was spread by all three Managers.

24. Prior to the meeting, Defendant Montesa told Ameriprise employee Laura McGeehan that the Managers were leaving for another financial services firm, that the Managers would "never leave" the employees of the Ameriprise office, that the Ameriprise employees could follow them, and that the Ameriprise employees could bring their clients with them.

25. At approximately 8:00 P.M. on April 20, 2006, in the Okemos office, while still Ameriprise employees, the Managers informed the financial advisors in the office that they were leaving Ameriprise for another financial services firm. The Managers told the financial advisors that they felt there were no more opportunities in the Ameriprise office, that there was no future for the Ameriprise office in Okemos, and that they would look out for the people in the Ameriprise office. The Managers then told the financial advisors that they had a deal worked out whereby the Ameriprise employees could join them at their new firm.

26. At the end of the meeting, the Managers encouraged the financial advisors to join them at Frank's Press Box that same night where the situation would be discussed further and in more detail.

27. At about 10:00 p.m. on April 20, all three Managers were present at Frank's Press Box. At that time, they shared with the Ameriprise advisors who attended more reasons for their move. They asserted to numerous Ameriprise advisors that their office would not remain open and that there would be an article on the front page of the Wall Street Journal that would "shake Ameriprise to its core." The Okemos office, however, has not closed and no such article appeared on the front page, or any page, of the Wall Street Journal.

28. Defendants Montesa and Soper also actively recruited the Ameriprise employees present during this time. They represented to various Ameriprise employees that they would have job opportunities available to them at Hantz Financial and that they had brokered a deal whereby all of the Ameriprise employees could relocate to Hantz. The Managers also encouraged the employees to contact them for more information. Montesa said that people at Hantz were all making over \$300,000 per year and if they were not, they would be moved into management positions. He also claimed that life was "great" over there. Soper also told the

financial advisors that Hantz had put its trust in him and that he would be able to get the Ameriprise financial advisors jobs because he knew them and he knew how they worked.

29. The Managers knew that they were engaging in questionable activity. In response to an Ameriprise employee's inquiry as to how to effectuate a change in affiliation and bring clients over without violating the terms of their noncompetes, the Managers told them that they "can't take client folders but they can take names and numbers and that's why they [Hantz] have 50 lawyers over there."

30. While at Frank's Press Box, the Managers informed the Ameriprise employees in attendance that they would be at a nearby Cracker Barrel restaurant the next day starting at 8:30 A.M. and would be available to speak about opportunities available at Hantz. They also informed Ameriprise employees that a senior vice president from Hantz would be at the meeting to answer any questions they might have.

31. From Frank's Press Box, Soper called Laura McGeehan and told her that he would meet her at the Ameriprise office the next day. McGeehan then emailed Group Vice President Gary Gassmann, who then spoke with Soper. As a result of that conversation, instead of resigning during the day on April 21, 2006, the Managers returned to the Ameriprise office, cleaned out their desks and submitted their resignations before the Friday work-day began.

III. On April 21, the Managers' Continued Their Recruitment Efforts.

32. On April 21, 2006, the Managers hosted a meeting in the smoking section of the local Cracker Barrel restaurant. The Managers were accompanied by Mike Reid, a Senior Vice President at Hantz Financial Services. The Cracker Barrel meeting was attended by a number of Ameriprise advisors, including Matt Tiede and Sharon Gittins, two of the three Ameriprise advisors who left to join Hantz in the past month.

33. The Managers and Reid brought paperwork with them by which Ameriprise advisors could resign and be hired as Hantz advisors. At least one Ameriprise advisor, Gittins, was observed filling out these forms and has since joined Hantz. Furthermore, Hantz provided a specialist to process the paperwork.

34. Numerous conversations took place between Ameriprise employees and certain Managers at the Cracker Barrel, primarily Jeffery Soper.

35. For instance, Soper informed McGeehan (who was not present at Frank's Press Box) that the office was closing, that there was a better opportunity available to advisors at Hantz, that the closing would happen within the next six months, that Gary Gassman (the Ameriprise Group Vice President) was lying to them, and that the remaining advisors were going to be fired without any severance package. He also told her that Hantz was much better, that there were better payouts, and that they pay a guaranteed salary.

36. Soper also had a conversation with Joe Maiullo, another Ameriprise advisor resident in the Okemos office. At that time, Soper took Maiullo outside the restaurant to the rocking chairs on the porch and asked him if he wanted to come over to Hantz. Soper informed Maiullo that Hantz was looking for people like him to move up into management and that Soper was really impressed by Maiullo and that he would like him to join Hantz.

37. Mike Reid also had conversations with Ameriprise financial advisors. He too had a conversation with Maiullo and asked him "what's it going to take to get you to come over." Maiullo informed Reid that he needed more time. On information and belief, Reid also spoke with and recruited other Ameriprise employees.

IV. Since April 21, 2006, the Managers Have Recruited and Continue to Recruit Numerous Ameriprise Employees.

38. The Managers have been actively recruiting Ameriprise financial advisors since the meeting at the Cracker Barrel, and asking those financial advisors to leave Ameriprise and join Hantz in competition with Ameriprise.

39. Joe Maiullo, an Ameriprise Financial Advisor in the Okemos office, stated that “it’s hard to even tell you how many times I’ve received calls on my cell phone from” Defendants Soper and Montesa. He also spoke to several of the Managers on April 28, 2006, and spoke with Montesa for an hour.

40. Laura McGeehan, an Ameriprise Financial Advisor in the Okemos office, was called in the middle of the week of April 24, 2006. Defendant Soper left a voice mail message informing Ms. McGeehan that she would have great opportunities at Hantz and that there was someone she should speak to.

41. Aaron Irving, an Ameriprise Financial Advisor in the Okemos office, received numerous phone calls from Defendant Soper after Friday, April 21 and continuing to Tuesday, April 25. He also met with Defendant Soper on two different occasions.

42. Nick Windt, an Ameriprise Financial Advisor in the Okemos office, received a voice mail from Defendant Soper informing him that there were good opportunities available for him at Hantz and that he should give Defendant Soper a call.

43. Travis Pasma, an Ameriprise Financial Advisor in the Okemos office, received a voice mail from Defendant Soper within the next week encouraging him to call Defendant Soper and find out about all of the great opportunities available at Hantz.

44. On information and belief, the Managers are continuing in their recruitment efforts of Ameriprise Financial Advisors, in violation of their agreements.

V. The Managers Are Recruiting Advisors to Compete Against Ameriprise At Hantz Financial Even Though The Advisors Are Subject to a Twelve-Month Noncompete Provision.

45. The P1 financial advisors whom the Managers are recruiting are all subject to contractual provisions in their P1 Employment Agreement.

46. By virtue of their positions at Ameriprise, the Managers are all aware of the terms of the P1 Employment Agreement executed by the P1 financial advisors they are recruiting.

47. The P1 Employment Agreements each include a prohibition on the financial advisors ability to solicit Ameriprise clients for 12 months after their employment ends. Specifically, the P1 Employment Agreement states that the financial advisors shall not: “Employ or seek to employ any person who is at that time employed by Company or any other person selling or distributing Products and Services offered by the Company and its affiliates or otherwise directly or indirectly induce such person to leave his or her employment or Affiliation with Company.”

**COUNT I
BREACH OF CONTRACT
(Against Albert Tynes, Adolpho Montesa II, and Jeffery Soper)**

48. Ameriprise repeats and realleges Paragraphs 1 through 47 of this Complaint as if fully set forth herein.

49. The Managers have violated and will further violate the provisions of their contracts whereby they covenanted not to recruit Ameriprise employees while employed by Ameriprise and after leaving Ameriprise.

50. The Managers have violated and will further violate the provisions of their contracts whereby they covenanted not to disparage Ameriprise while employed by Ameriprise and for a time thereafter.

51. As a direct and proximate result of the Managers' breach and threatened breach of their contracts, Ameriprise has suffered damages in excess of \$75,000 and will continue to suffer said financial harm as well as irreparable injury to goodwill and reputation, unless and until the Managers are restrained from their unlawful conduct.

52. As a direct and proximate result of the Managers' breach of their contracts, Ameriprise has suffered additional damages, which continue to accrue in the form of attorneys' fees and costs related to this litigation.

COUNT II
BREACH OF THE DUTY OF LOYALTY
(Against Albert Tynes, Adolpho Montesa II, And Jeffery Soper)

53. Ameriprise repeats and realleges Paragraphs 1 through 52 of this Complaint as if fully set forth herein.

54. All three Managers enjoyed a position of trust and confidence with Ameriprise.

55. As a result of this position, Ameriprise shared valuable information with the Managers and afforded them great leeway in their management of the Okemos Ameriprise office.

56. This position of trust and confidence imposed a duty upon the Managers not to compete against Ameriprise's financial interests.

57. The Managers breached their fiduciary duties of loyalty and candor by actively recruiting Ameriprise employees for Hantz Financial Services, Inc., while still under Ameriprise's employ.

58. Ameriprise has been injured and is continuing to be injured by the Managers' breach of their fiduciary duties to Ameriprise.

COUNT III
TORTIOUS INTERFERENCE WITH CONTRACT
(Against Albert Tynes, Adolpho Montesa II, And Jeffery Soper)

59. Ameriprise repeats and realleges the allegations of paragraphs 1 through 58 of this Complaint as if fully set forth herein.

60. Tynes, Montesa and Soper intentionally, improperly, and wrongfully interfered with Ameriprise's contractual relations by inducing or attempting to induce third persons -- the P1 advisors in the Okemos office -- to violate their contractual obligations.

61. Specifically, knowing that all of the P1 advisors in the Okemos office were prohibited from, among other things, soliciting the clients they serviced while at Ameriprise during the twelve months after leaving Ameriprise, the Managers encouraged all of the P1 advisors to violate their agreements and actually assisted those advisors who left in violating their agreements.

62. Ameriprise has been injured and is continuing to be injured by the Managers' unfair competition and improper conduct.

63. Ameriprise is entitled to a temporary and permanent injunction prohibiting Hantz from engaging in further unfair competition in order to protect Ameriprise and its employees, as well as damages and other relief allowed by law.

COUNT IV
TORTIOUS INTERFERENCE WITH CONTRACT
(Hantz Financial Services)

64. Ameriprise repeats and realleges the allegations of paragraphs 1 through 63 of this Complaint as if fully set forth herein.

65. Hantz intentionally, improperly, and wrongfully interfered with Ameriprise's contractual relations by inducing third persons, the Managers, to violate their contractual obligations.

66. Specifically, knowing that all three Managers were prohibited from recruiting Ameriprise employees, Hantz encouraged and assisted the Managers in recruiting Ameriprise employees.

67. Ameriprise has been injured and is continuing to be injured by Hantz's unfair competition and improper conduct.

68. Ameriprise is entitled to a permanent injunction prohibiting Hantz from engaging in further unfair competition in order to protect Ameriprise and its employees, as well as damages and other relief allowed by law.

WHEREFORE, Ameriprise respectfully requests that this Honorable Court grant the following relief pending a final decision by the NASD:

A. Enter an injunction enjoining Albert Tynes, Adolpho Montesa II, and Jeffery Soper, from recruiting and/or contacting Ameriprise employees, or otherwise violating their agreements;

B. Enter an injunction against Hantz Financial, Inc., enjoining it from recruiting and/or contacting Ameriprise employees, with the direct or indirect assistance of Albert Tynes, Adolpho Montesa II, and Jeffery Soper; and

C. Grant such other equitable and legal relief as the Court deems appropriate, including attorneys' fees and costs.

Respectfully submitted,

DICKINSON WRIGHT PLLC
Attorneys for Plaintiff

By: 

Scott R. Knapp (P61041)

Business Address:

215 South Washington Square

Suite 200

Lansing, MI 48933

Telephone: (517) 371-1730

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