

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
CIVIL ACTION
NO. 08-4791-BLS1


TECHNICAL AID CORPORATION,
Plaintiff

vs.

RALPH EDWARD YUNG and EDI SPECIALISTS, INC.,
Defendants

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER ON PLAINTIFF'S
MOTION FOR A PRELIMINARY INJUNCTION

The defendant Ralph Edward Yung ("Yung") was employed by the plaintiff Technical Aid Corporation ("TAC") as a Technical Business Analyst from September 8, 2003 until September 19, 2008, when he was terminated by TAC. When he began his employment, he signed a form Employment Agreement with TAC that, among other provisions, barred him for a period of 18 months from soliciting any TAC customer that he serviced while at TAC and obligated him to return all TAC records when he ended his employment. Following his termination by TAC, Yung soon commenced employment with EDI Specialists, Inc. ("EDI"), another staffing company that competes with TAC. TAC now moves for a preliminary injunction that would bar him from soliciting any staffing work from EMC Corporation ("EMC") and that would require him to return all TAC records he took with him.

Yung had been employed at EMC from 1995 through 2002, first as a senior systems engineer and then as a quality control manager and facilitator of service resources. EMC has been a major staffing customer of TAC since 2000 so, after Yung was laid off from EMC in a reduction in force, TAC hired him to solicit EMC business and serve as the "right hand" of the TAC National Account Vice President who was responsible for the EMC staffing program. In 2006, TAC encouraged Yung to take other positions at TAC, such as a recruiter or in sales, since

TAC believed that he was not making substantial headway in developing TAC's relationship with EMC. He declined these overtures, and continued to work closely with EMC until he was terminated shortly after he suffered a heart attack.

The non-solicitation provision in the Employment Agreement is enforceable only to the extent that it is "necessary to protect the legitimate business interests of the employer." Marine Contractors Co., Inc. v. Hurley, 365 Mass. 280, 287 (1974). "Such legitimate business interests might include trade secrets, other confidential information, or, particularly relevant here, the good will the employer has acquired through dealings with his customers." Id. This Court is not persuaded that the protection of trade secrets or confidential information is at issue with respect to the non-solicitation agreement; its only true justification, if there is any, is the protection of TAC's good will in its relationship with EMC. The good will, however, that TAC legitimately may preserve is its own good will, not the good will earned by the employee that fairly belongs to the employee. See Sentry Insurance v. Firnstein, 14 Mass. App. Ct. 706, 708 (1982) ("The objective of a reasonable noncompetition clause is to protect the employer's good will, not to appropriate the good will of the employee"). The dilemma is that, to some degree, TAC's good will and the employee's good will are inevitably intertwined. Here, this Court finds that the good will primarily belongs to Yung, who worked at EMC for six years before commencing his employment with TAC. Indeed, TAC apparently has not believed since 2006 that Yung was central to its relationship with EMC, since it admits that it had been trying since then to move Yung into a different position where he would not be working closely with EMC. To be sure, TAC does not wish Yung, now that he has at EDI, to compete with TAC for one of its largest staffing customers, but that wish is not sufficient to support the enforcement of a restrictive covenant. Therefore, TAC's motion for a preliminary injunction that would bar Yung from

soliciting EMC's business for EDI is denied.

This Court will enforce that part of the Employment Agreement which requires Yung to return all books and records belonging to TAC upon the termination of his employment. Therefore, this Court orders Yung, in accordance with paragraph 10 of that Agreement, to return to TAC "all records, copies of records and papers pertaining to any and all transactions handled by [Yung] while associated with TAC," as well as all TAC records that Yung obtained through his access to the computers of other TAC employees. This includes both electronic and paper records, however stored. For purposes of this litigation only, a copy of all such returned records may be retained by Yung's counsel.

ORDER

After hearing today, for the reasons stated above, this Court **ALLOWS** the plaintiff's motion for a preliminary injunction to the limited extent that the defendant Yung is hereby **ORDERED**, in accordance with paragraph 10 of his Employment Agreement, to return to TAC "all records, copies of records and papers pertaining to any and all transactions handled by [Yung] while associated with TAC," as well as all TAC records that Yung obtained through his access to the computers of other TAC employees, no later than November 14, 2008. This includes both electronic and paper records, however stored. For purposes of this litigation only, a copy of all such returned records may be retained by Yung's counsel. Beyond this, the plaintiff's motion for preliminary injunction is **DENIED**.



Ralph D. Gants
Justice of the Superior Court

DATED: November 4, 2008