

How One Company (With Help From Sheppard Mullin) Has Raked in \$145 Million from Enforcing Its Employment Agreements

By Jenna Greene

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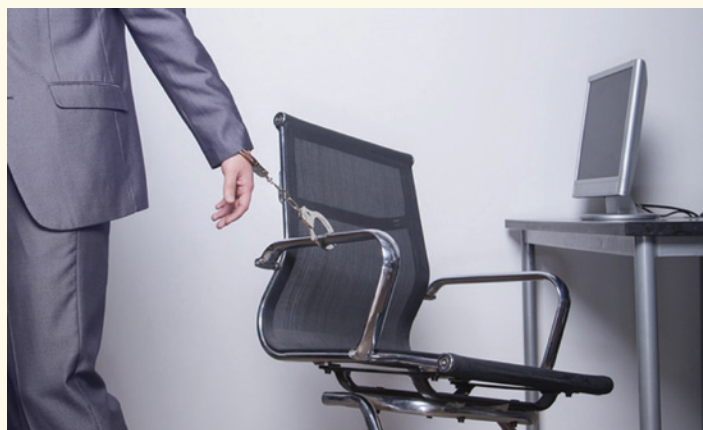
Here's a number to marvel at: \$145 million.

That's how much interdealer broker TP ICAP has recovered in the last three years by enforcing its employee agreements in the United States, according to Stephen Goulet, general counsel for the Americas.

Most of the money has come from two big settlements, but the company has shown it can and will hold individual employees liable for breaching employment agreements as well.

The latest win came last week, when a panel of FINRA arbitrators awarded the London-based company (formerly known as Tullett Prebon) just under \$2 million in damages and legal fees for breach of contract after a vice president took an equity sales position at competitor Bay Crest Partners in New York City. Almost the entire penalty was levied against the vice-president, Andrew Arnold, personally.

His transgression? He began working at Bay Crest three months after he resigned from Tullett Prebon. That's when his non-compete was up, but he was also subject to a 12-month "garden leave" provision.



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Common in the financial sector, especially in the U.K., the contractual provision required Arnold to give one year's notice before changing jobs. (Likewise, if TP ICAP wanted to fire him, they had to give him a year's notice.)

During that time, he'd get paid and was "free to interact with his clients," according to Sheppard Mullin Richter & Hampton labor and employment practice co-head Jonathan Stoler, who said TP ICAP had paid Arnold almost \$4 million in compensation in less than a four-year period.

Or if he preferred, Arnold could stay home and do nothing but collect a paycheck and tend his proverbial garden.

On one hand, that sounds lovely. I could totally garden for a year. But for an ambitious, up-and-coming professional, the provision is a serious obstacle to changing jobs.

Not only does a would-be new employer have to wait a year for the new hire, Stoler acknowledged that it also gives the old employer “an opportunity to get its own ducks in a row and do what it can to salvage the business that it invested so heavily in.”

Worldwide, TP ICAP has about 3,425 brokers, who act as intermediaries between buyers and sellers. Stoler said most of them are subject to garden leave provisions.

Arnold didn’t wait—and paid the price. His lawyer, Jed Marcus of Bressler, Amery & Ross in New Jersey, did not respond to a request for comment.

Goulet of TP ICAP in a statement to the Lit Daily called the case the latest example of the company “acting decisively and successfully in the enforcement of its employment agreements and in defense of its legal rights ... we will not hesitate to bring swift action when necessary to protect our interests.”

In early 2015, Tullet Prebon settled a suit against BGC Partners for \$100 million after the rival allegedly misappropriated confidential information and used it to poach more than 80 of its brokers.

The same company and brokers were also ordered by arbitrators to pay \$33 million to Tullet Prebon

for the incident—\$20 million from the brokers, and \$13 million from the company, though BGC told The Telegraph that it would cover the entire bill.

Sheppard Mullin prevailed on TP ICAP’s behalf in another recent case as well, a \$9.1 million win in December 2016 for breach of contract against a former broker who jumped to competitor Tradition Asiel Securities Inc.

A panel of FINRA arbitrators found the broker and Tradition Asiel were jointly and severally liable for breach of contract and tortious interference. They were ordered to pay Tullett \$4.5 million in compensatory damages, \$4.5 million in attorneys’ fees, and over \$100,000 in costs.

“In the interdealer broker industry, there’s fierce competition for brokers with large books of business. Tullett is ready and willing to compete fairly, but will not tolerate poaching of brokers under contract and subject to non-compete obligations,” Sheppard Mullin labor and employment partner and lead counsel Jack Kiley said in a written statement.

Ruling by FINRA arbitrators are not binding on other panels, but that’s almost irrelevant now. The company has sent an unequivocal message to its brokers: if you leave, we’ll come after you.

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