IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF CONNECTICUT

TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA,	:	CASE NO.
Plaintiff,	:	
v.	:	
DAVID WHEATLEY, TIMOTHY O'SHEA, and WILLIAM MCDONALD,	:	
Defendants.		

COMPLAINT

Teachers Insurance and Annuity Association of America ("TIAA"), through its undersigned attorneys, hereby brings the following Complaint against Defendants David Wheatley ("Wheatley"), Timothy O'Shea ("O'Shea"), and William McDonald ("McDonald") and, in support thereof, avers as follows:

I. PARTIES

1. TIAA is a New York life insurance company with its principal place of business in New York.

2. Defendants all are former Wealth Management Advisors for TIAA. Wheatley and O'Shea both worked in TIAA's Hamden, Connecticut office and McDonald worked in TIAA's Hartford, Connecticut office.

3. Defendant Wheatley was and is a Connecticut citizen residing in Easton, Connecticut.

4. Defendant O'Shea was and is a Connecticut citizen residing in Watertown, Connecticut.

5. Defendant McDonald was and is a Connecticut citizen residing in West Hartford, Connecticut.

II. JURISDICTION AND VENUE

6. This Court has jurisdiction over this dispute by virtue of diversity of citizenship, 28 U.S.C. §1332. The amount in controversy exceeds Seventy-Five Thousand Dollars ($75,000), exclusive of interest and costs, against each Defendant. Defendants Wheatley, O'Shea, and McDonald had access to and managed clients with over $870 million, $915 million, and $660 million, respectively, for a total of over $2 billion in assets with TIAA. The clients to which each Defendant had access and managed generate substantially in excess of $75,000 in annual revenues.

7. Venue is proper both because a transaction or occurrence out of which the cause of action arose took place in this district and Defendants reside in this district.

III. FACTS

A) Defendants' Contractual Obligations

8. Wheatley, O'Shea, and McDonald commenced their affiliation with TIAA in 2013, 2007, and 2015, respectively. TIAA paid for Defendants' registrations with various securities exchanges, provided them with accounts to service, and gave Defendants many other benefits throughout their affiliation with the company. As a result of the many benefits given to them by TIAA, Defendants also collectively gained access to and familiarity with clients investing over $2 billion in assets with the company.

9. In connection with their ongoing affiliation with TIAA, Defendants each signed a Confidentiality and Non-Solicitation Agreement (the "Agreement") containing notice, non-solicitation, confidentiality, and non-disparagement covenants. (*See* Exhibits "A" – "C").

10. The Agreement restricts Defendants' use of TIAA's confidential and trade secret information. (*See* Exhibits "A" – "C" at ¶ 1).

11. The Agreement further prohibits Defendants from interfering with TIAA's client relationships. (*See* Exhibits "A" – "B" at ¶ 2(c) and Exhibit "C" at ¶ 2(d)).

12. Defendants also agreed they would not engage in defamatory or disparaging comments directed at TIAA. (*See* Exhibits "A" – "C" at ¶ 5).

13. The Agreement also expressly provides as follows: "**EMPLOYEE'S AFFIRMATION OF THOROUGH REVIEW**. EMPLOYEE AFFIRMS THAT EMPLOYEE HAS CAREFULLY READ THIS AGREEMENT, KNOWS AND UNDERSTANDS ITS TERMS, CONDITIONS AND EFFECTIVE DATE, AND HAS HAD THE OPPORTUNITY TO ASK ANY QUESTIONS THAT EMPLOYEE MAY HAVE PRIOR TO SIGNING THIS AGREEMENT." (*See* Exhibits "A" – "B" at ¶ 10 and Exhibit "C" at ¶ 11) (capitalization in the original).

14. The Agreement (at ¶7) further provides that TIAA is entitled to preliminary and permanent injunctive relief upon its breach or threatened breach and to expedited discovery in aid of a preliminary injunction motion:

> Employee's actual or threatened breach of this Agreement shall entitle the Company to temporary, emergency, preliminary, and permanent injunctive relief to compel Employee's specific performance of Employee's obligations under this Agreement, it being agreed that any breach or threatened breach of this Agreement by Employee would cause immediate and irreparable injury to the Company that could not be adequately compensated by money damages…. The Company shall also be entitled to expedited discovery without the necessity that the Company firsts seek a court order authorizing such discovery, including depositions, in connection with any proceeding alleging breach or threatened breach of this Agreement, whether or not the laws of the jurisdiction of the proceeding provide for expedited discovery.[1]

15. The Agreement is just a part of TIAA's efforts to maintain the confidentiality of its

[1] The verbiage in McDonald's Agreement varies slightly but still provides for injunctive relief and expedited discovery.

client information. Wealth Management Advisors are also required to review and acknowledge their agreement to abide by the TIAA Compliance Manual (the "Manual").

16. The Manual, like the Agreement, makes clear that confidential information includes, among other things, the identities of TIAA's actual or prospective clients.

17. TIAA also limits a Wealth Management Advisor's access to client information only to those clients he/she services, including by assigning passcodes.

B) Defendants Began Violating Their Obligations Before Even Resigning

` 18. On September 3, 2021, Defendants gave notice of their resignations, *en masse*, from TIAA. Upon information and belief, prior to giving notice, Defendants contacted certain of TIAA's clients about moving to Defendants' new venture.

19. The Agreement required Defendants to provide 30-days written notice of intent to resign and end their employment with TIAA. (*See* Exhibits "A" – "B" at ¶ 2(a) and Exhibit "C" at ¶ 2(b)). Under the Agreement, Defendants remained TIAA employees through and including October 3, 2021.

20. Prior to giving notice of his resignation, Wheatley told a TIAA client that he was leaving the company and words to the effect that there was a "mass exodus of Yale advisors from TIAA."

21. With the exception of Wheatley and O'Shea, the only other two TIAA Wealth Management Advisors aligned with Yale University to leave the company had availed themselves of TIAA's Voluntary Separation Program nearly a year earlier in late 2020.

22. Wheatley also told this TIAA client, again before giving notice of his resignation and while still on the company's payroll, that the client would not be able to get any support from TIAA's Hamden, Connecticut office.

23. Another client Wheatley formerly serviced recently advised TIAA that, before giving notice of his resignation, Wheatley had been very negative about TIAA, told her all the things he felt were "wrong" with the company, and proceeded to detail all the reasons why he would be leaving TIAA.

24. Yet a third client formerly serviced by Wheatley said she received an email from him about his departure either prior to his giving notice or shortly thereafter.

25. On August 20, 2021, again prior to giving notice of his resignation, Wheatley emailed multiple TIAA clients to schedule calls/Zoom meetings to take place between August 25 – September 1, ostensibly to "speak about your accounts" and the "overall current economic outlook and how that may impact your portfolio."

26. Upon information and belief, the purpose of these calls/Zoom meetings was for Wheatley to "set the table" with clients about his pending move to a TIAA competitor.

27. One client confirmed being told by Wheatley in an August 24, 2021 telephone call about his upcoming move, *before* any of these calls/Zoom meetings were scheduled to occur.

28. Upon information and belief, during the course of these calls/Zoom meetings, Wheatley advised additional TIAA clients of his upcoming departure and/or made false and disparaging comments about TIAA in the hope it would lead clients to follow him to his new venture.

29. In a September 1, 2021 email, Wheatley pressed one client to speak on September 2 or 3, knowing full well he would be giving notice of his departure on September 3, 2021.

30. On September 2, 2021, just one day before giving notice, O'Shea emailed a client saying "Please call me when you have a minute. I'd like to catch up and have a review."

31. During O'Shea's notice period, and while he continued to be paid by TIAA, a

representative for another client he formerly serviced left a voicemail saying that she knew he was going into "private practice."

32. A second client formerly serviced by O'Shea similarly advised TIAA during O'Shea's notice period that he knew O'Shea was leaving the company.

33. On August 25, 2021, undoubtedly when he knew his departure was imminent, McDonald emailed one client relationship to say he was "just checking in" and to suggest a "quick phone call."

34. The same day, McDonald emailed the CPA for a second client relationship to set up a "quick phone call" about the clients' accounts.

35. On August 31, 2021, just a few days before giving notice of his resignation, McDonald left a voicemail for another TIAA client about meeting to "review" things.

36. This particular client expressed surprise, noting that the two recently had a Zoom meeting in June 2021 and "reviewed all."

37. On September 1, 2021, McDonald emailed another TIAA client about a "quick check in call" for September 2 or 3, prior to giving notice or his last day as an active TIAA employee.

C) TIAA's Efforts To Obtain Compliance With Its Rights Have Been Unsuccessful

38. On September 10, 2021, TIAA sent correspondence to Defendants demanding that they honor their obligations. (*See* Exhibits "D" – "F").

39. By email dated September 13, 2021, Defendants' counsel said she would be in touch "more substantively" by the end of the week.

40. TIAA receive no further response that week.

41. By correspondence dated September 17, 2021, after discovering Defendants had

been discussing their move to a competitor with clients before even giving notice of their departures, TIAA sent follow-up correspondence seeking the identity of "all clients with whom Mr. Wheatley, Mr. O'Shea, and Mr. McDonald discussed their pending move while still in TIAA's employ." (*See* Exhibit "G").

42. The following week, September 22, 2021, Defendants' counsel replied, in part, that Defendants "have not solicited clients before or after giving notice," a representation directly at odds with the above-described conduct. (*See* Exhibit "H").

43. To ensure there was no wordsmithing, and that Defendants were not using the term "solicited" in a very narrow manner, by correspondence dated September 23, 2021 TIAA reiterated its demand that Defendants identify all clients with whom they discussed their pending move while still in TIAA's employ. (*See* Exhibit "I").

44. Receiving no response, by email dated September 30, 2021, TIAA asked when a response would be forthcoming, to which Defendants' counsel replied "[w]hen I return on my vacation."

45 When Defendants' counsel returned from vacation on October 7, 2021, however, she made clear in a phone call that no written response would be forthcoming.

46. Defendants have refused to identify the clients with whom they discussed their pending move while still in TIAA's employ.

47. In both its September 17 and 23 correspondence, TIAA cited extensive case law that solicitation can occur regardless of who may initiate the contact. (*See* Exhibits "G" and "I").

48. This is especially true given that any contacts initiated by TIAA clients may be in response to contacts Defendants initiated with these same clients about their pending move before even giving notice of their resignations.

49. Effective October 4, 2021, Wheatley, O'Shea, and McDonald became affiliated with Tidewater Wealth Management ("Tidewater") with offices in New Haven, Connecticut and West Hartford, Connecticut. Tidewater offers services competitive to Plaintiff.

50. Defendants have failed to provide adequate assurances they will not solicit TIAA clients.

51. In fact, on October 12, 2021, a client advised TIAA he received a call from O'Shea asking that he move funds from TIAA to Tidewater.

52. Based on Defendants' conduct to date, upon information and belief, Defendants have solicited and/or intend to solicit TIAA clients to transfer to Tidewater, and violate their other obligations including not to disparage TIAA.

COUNT I – BREACH OF CONTRACT

53. The allegations of Paragraphs 1 through 52 are incorporated herein by reference with the same force and effect as if set forth in full below.

54. The Agreement is governed by New York law.

55. The terms of the Agreement, including the notice, non-solicitation, confidentiality, and non-disparagement provisions, are enforceable as a matter of New York and/or Connecticut law.

56. Defendants have violated their contractual obligations by, *inter alia*, soliciting and/or attempting to solicit clients and, in Wheatley's case, disparaging TIAA to clients.

57. The Agreement also provides for expedited discovery without the need for a Court Order. (*See* Exhibits "A" – "C" at ¶ 7).

58. Defendants have further violated the Agreement by refusing to identify the TIAA clients with whom they discussed their pending move while still in TIAA's employ.

59. As a consequence of the foregoing, TIAA has suffered and will continue to suffer irreparable harm and financial loss.

60. As a consequence of Defendants' breaches, TIAA has suffered, or is under imminent threat of suffering, irreparable harm.

COUNT II – BREACH OF THE DUTY OF LOYALTY

61. The allegations of Paragraphs 1 through 60 are incorporated herein by reference with the same force and effect as if set forth in full below.

62. Defendants had a duty of loyalty to act in the best interests of TIAA at all times throughout their employment.

63. Defendants violated their duty of loyalty, *inter alia*, by soliciting and/or attempting to solicit clients while still in TIAA's employ and, in Wheatley's case, disparaging TIAA to clients.

64. As a consequence of the foregoing, TIAA has suffered and will continue to suffer irreparable harm and financial loss.

COUNT III – UNFAIR COMPETITION

65. The allegations of Paragraphs 1 through 64 are incorporated herein by reference with the same force and effect as if set forth in full below.

66. The Connecticut Unfair Trade Practices Act, § 42-110a, *et seq*. ("CUPTA"), provides that "[n]o person shall engage in unfair methods of competition or deceptive acts or practices in the conduct of any trade or business."

67. While employed by TIAA, and continuing after their resignation, Defendants have engaged in conduct designed to compete with TIAA for business and business opportunities.

68. Defendants' acts alleged herein were done in the conduct of trade or commerce within the meaning of the CUPTA.

69. Defendants violated CUPTA, *inter alia*, by (i) soliciting clients while still being paid by TIAA; (ii) deceptively scheduling Zoom meetings/calls with clients on the eve of their departures under the guise of wanting to "speak about your accounts" and the "overall current economic outlook and how that may impact your portfolio," "catch up and have a review," and "check in" when, in reality, the purpose of the Zoom meetings/calls was to "set the table" for their move to a competitor; and (iii) in Wheatley's case, disparaging TIAA to clients prior to and/or subsequent to his resignation.

70. Defendants' above-described conduct was deceptive, immoral, unfair, unscrupulous, oppressive, unethical and contrary to public policy against intentional interference with contracts, and caused substantial injury to TIAA, which was not outweighed by any countervailing benefit to consumers or competition and injury that Plaintiff could not reasonably have avoided, thereby constituting unfair and/or deceptive trade practices in violation of CUTPA.

71. Defendants' above-described conduct also constitutes deceptive acts or practices prohibited by CUTPA.

72. Defendants' conduct was an intentional and wanton violation of TIAA's rights and/or was done with reckless indifference to those rights.

73. As a result of Defendants' unfair and deceptive acts or practices, TIAA has suffered ascertainable loss and has been damaged.

74. As a consequence of the foregoing, TIAA has suffered and will continue to suffer irreparable harm and ascertainable loss.

75. Pursuant to Conn. Gen. Stat. § 42-110g(c) a copy of this complaint has been transmitted electronically to the Attorney General and the Commissioner of Consumer Protection via cutpa@ct.gov.

WHEREFORE, by virtue of the foregoing acts, TIAA demands that judgment be entered in its favor against Defendants for (i) preliminary and permanent injunctive relief; (ii) compensatory and/or liquidated damages in an amount to be determined at trial; (iii) attorneys' fees and costs under the Agreement and CUPTA; and (iv) punitive damages.

Respectfully submitted,

Teachers Insurance and Annuity Association of America

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