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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Adviser's Calls To Ex-Clients Breached Contract, Judge Says

By **Jack Newsham**

Law360, New York (September 7, 2017, 7:44 PM EDT) -- A onetime financial adviser at Fidelity Brokerage Services who rang up and solicited a handful of former clients when he moved to J.P. Morgan Securities violated his agreement with Fidelity, a California federal judge ruled Thursday, giving the former employer the green light for a quick arbitration process.

Brett Rocine said he didn't take any trade secrets or confidential information with him when he left his job as a financial consultant at Fidelity to set up shop at J.P. Morgan, wrote down a list of a few dozen client names he remembered and started calling them. But U.S. District Judge Phyllis Hamilton said it was "disingenuous, at best" for Rocine to argue that he did nothing wrong when he only knew those names from his work for Fidelity.

Even if there were no trade secrets involved, the judge said, Rocine didn't dispute that his employment agreement with Fidelity barred him from doing exactly what he did. She issued a four-week temporary restraining order, which Fidelity had sought so the Financial Industry Regulatory Authority would allow for an expedited arbitration process.

"What the TRO bars is the use by Rocine of Fidelity's customer information — whether that information is stored in his brain or located elsewhere — to solicit customers to transfer their accounts," the judge wrote.

A Fidelity spokesman said the company was pleased with the court's ruling.

According to Fidelity, Rocine spent two years at the firm, working with hundreds of investors whose total assets exceeded $844 million. He agreed to follow the company's information security policy when he signed on and was reminded of it again when he quit in July to join J.P. Morgan, the TRO motion said.

It didn't take long before customers began reporting back to Fidelity that Rocine was leaving them messages encouraging them to switch their investments to J.P. Morgan, the company said. Fidelity blasted out a cease-and-desist letter to Rocine in early August, it said, and J.P. Morgan responded, saying Rocine had assured the company that he hadn't snuck away with any secret client information.

Judge Hamilton said she was swayed by Fidelity's attestations that its customers had expressed discomfort with Rocine's calls and that he was soliciting them, not merely notifying them that he'd changed firms. She also rejected Rocine's challenge to a recording of a call that Fidelity played at the TRO hearing.

Both Rocine and J.P. Morgan, which is also a defendant in the case, were given five days to return all the confidential information Rocine brought from his former employer to Fidelity.

Lawyers for Rocine and J.P. Morgan didn't respond to requests for comment late Thursday.

Fidelity is represented by Marc R. Lewis and Ryan B. Erickson of Lewis & Llewellyn LLP and Russell Beck and Stephen D. Riden of Beck Reed Riden LLP.

Rocine and J.P. Morgan are represented by Andrew M. Hutchison of Cozen O'Connor and Leonard Weintraub of Paduano & Weintraub LLP.

The case is Fidelity Brokerage Services LLC v. Rocine, et al., case number 4:17-cv-04993 in U.S. District Court for the Northern District of California.

--Editing by Alanna Weissman.
