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IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

OCT 06 2022
S. HARVEY, JR.
CIVIL TRIAL DIVISION

NEW BEGINNINGS HOME HEALTH
CARE LLC,

Plaintiff,

v.

PAULINO HOME HEALTH CARE
LLC, ELGA HERNANDEZ-
GONZALEZ, MARIA RIVERA, and
VIVIAN ROSARIO,

Defendants.

MARCH TERM, 2022

No. 1225

CONTROL No. 22032676

COMMERCE PROGRAM

ORDER

AND NOW, this 4th day of October, 2022, upon consideration of Plaintiff's Petition for Preliminary Injunction, and all other matters of record, and after several hearings that concluded

On September 13, 2022, it is hereby ORDERED as follows:

The petition for preliminary injunction is DENIED.

BY THE COURT:


NINA WRIGHT PADILLA, S.J.

220301225-New Beginnings Home Care Llc Vs Paulino Home Healt



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OPINION

This is a dispute between two agencies that provide home health care services. Plaintiff New Beginnings Home Health Care, LLC (“New Beginnings”) filed this emergency petition for injunctive relief against Paulino Home Health Care LLC (“Paulino”) and three (3) individual former employees of New Beginnings who went to work for Paulino. New Beginnings asks this Court to enforce its employee noncompete/nonsolicitation agreement against Defendants Elga Hernandez-Gonzalez, Maria Rivera, and Vivian Rosario. A hearing on the injunction was held, and the Court heard testimony over three days, concluding on September 13, 2022. For the reasons which follow, the petition for injunctive relief is denied.

New Beginnings employed the three (3) individual former employee defendants. Elga Hernandez-Gonzalez worked at New Beginnings from May 29, 2020 to November 9, 2021; Maria Rivera worked at New Beginnings from August 9, 2019 to October 18, 2021; and Vivian Rosario worked at New Beginnings from June 23, 2021 to November 15, 2021. All of them worked in the position of Patient Coordinator for part or all of their employment at New

Beginnings. Patient Coordinators have access to patient and caregiver contact information. In October and November 2021, all three of them resigned from New Beginnings and began working at Paulino. New Beginnings alleges that all three (3) defendants signed noncompete agreements in the course of their employment which forbid the employee from competing with New Beginnings, or soliciting employees or patients from New Beginnings, for a period of twelve months and in a geographic area of 20 miles.

The six essential prerequisites that a moving party must demonstrate to obtain a preliminary injunction are as follows: (1) the injunction is necessary to prevent immediate and irreparable harm that cannot be compensated adequately by damages; (2) greater injury would result from refusing the injunction than from granting it, and, concomitantly, the issuance of an injunction will not substantially harm other interested parties in the proceedings; (3) the preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; (4) the party seeking injunctive relief has a clear right to relief and is likely to prevail on the merits; (5) the injunction is reasonably suited to abate the offending activity; and, (6) the preliminary injunction will not adversely affect the public interest.¹

New Beginnings has not demonstrated the ability to meet several of the prerequisites. Particularly, it has not established that it has a clear right to relief and is likely to prevail on the merits, because the noncompete agreements upon which it relies were not shown to be enforceable. “When a non-competition clause is required after an employee has commenced his or her employment, it is enforceable only if the employee receives “new” and valuable consideration—that is, some corresponding benefit or a favorable change in employment status.”² The agreements upon which New Beginnings relies were not signed at the commencement of employment. In fact, defendant Hernandez-Gonzalez credibly testified that she signed the agreement on November 9, 2021, the last day of her employment at New

¹ SEIU Healthcare Pennsylvania v. Com., 628 Pa. 573, 583–84, 104 A.3d 495, 501–02 (2014).

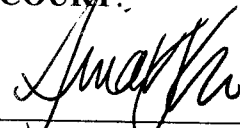
² Socko v. Mid-Atl. Sys. of CPA, Inc., 633 Pa. 555, 570, 126 A.3d 1266, 1275 (2015).

Beginnings, when she went to pick up her final paycheck. Defendant Rivera credibly testified that she signed her agreement on September 17, 2021. New Beginnings has not demonstrated that the defendants received new and valuable consideration in exchange for signing the agreements.

For the foregoing reasons, the injunction is denied.

DATED:

BY THE COURT:

A handwritten signature in black ink, appearing to read "Nina Wright Padilla", written over a horizontal line.

NINA WRIGHT PADILLA, SJ.