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Forfeiture Clauses Triggered by Non-Solicitation Breaches Do Not Fall Under Massachusetts Noncompetition Agreement Act

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Enacted in 2018, the Massachusetts Noncompetition Agreement Act (the "Act") restricted employers' use of non-competition agreements in a variety of ways, including requiring compensation during the post-employment restricted period and prohibiting enforcement against non-exempt employees or those terminated without cause. While the Act explicitly excludes covenants not to solicit from its definition of noncompetition agreements, it had been unclear whether pairing a non-solicitation covenant with a forfeiture clause could bring the provision under the forfeiture restrictions of the Act. The Massachusetts Supreme Judicial Court clarified this summer that it does not.

In Miele v. Found. Med., Inc., 496 Mass. 171 (2025), the plaintiff, Susan Miele, was employed at Foundation Medicine, Inc. ("Foundation Medicine"). In connection with her separation in 2020, she and Foundation Medicine executed a "Transition Agreement" in which Miele would receive approximately $1.2 million in transition benefits. The Transition Agreement expressly incorporated the restrictive covenant agreement Miele previously signed when she first joined the company, which included non-competition and non-solicitation agreements for the entirety of her employment and for one year thereafter. The Transition Agreement had a forfeiture provision if Miele breached any of her contractual obligations.

In 2021, Foundation Medicine informed Miele of its understanding that she had breached the anti-solicitation agreement by recruiting several active Foundation Medicine employees to work with her at Miele's new company. Foundation Medicine consequently stopped further payments of the transition benefits and demanded she repay the amounts they had already disbursed. Miele refused and ultimately sued Foundation Medicine for breach of the Transition Agreement by ceasing her payments.

Miele sought a judgment on the pleadings by arguing that the Act's prohibition on forfeiture for noncompetition activities included forfeiture for non-solicitation activities as well. The Supreme Judicial Court held that "[b]ecause the [A]ct expressly excludes non-solicitation covenants, and the forfeiture at issue is triggered solely by breach of such a covenant, the [A]ct does not apply." It based its holding on what it described as clear statutory language as well as "supplementary confirmation" in the legislative history of the Act.

This decision clarifies for employers that they can include forfeiture clauses to enforce nonsolicitation agreements without following the onerous statutory requirements for non-competition clauses.

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