

Say Nothing Means Say Nothing: The Facebook Post that Cost \$80,000

03/22/17

When Gulliver Schools, Inc. ("Gulliver") did not renew Mr. Snay's contract as the school's headmaster, Mr. Snay filed a complaint alleging age discrimination and retaliation. In full and final settlement of Mr. Snay's claims, the parties entered into a general release and settlement agreement.

Gulliver was to pay Mr. Snay \$10,000 in back pay and \$80,000 pursuant to a 1099. A material provision of the settlement agreement was the detailed confidentiality provision. The provision required Mr. Snay and his wife to keep strictly confidential the terms of the agreement or a portion of the settlement proceeds (the \$80,000) would be returned. The agreement specifically said that Mr. Snay "shall not either directly or indirectly, disclose, discuss or communicate to any entity or person, except his attorneys or other professional advisors or spouse any information whatsoever regarding the existence or terms of this agreement..." and "[a] breach... will result in disgorgement of the plaintiff's portion of the settlement payments."

Only four days after the agreement was signed, Gulliver notified Mr. Snay that he had breach the agreement based on a Facebook posting of Mr. Snay's college-age daughter. The posting said "Mama and papa Snay won the case against Gulliver. Gulliver is now officially paying for my vacation to Europe this summer. SUCK IT." The Facebook post was disseminated to approximately 1200 of the daughter's Facebook friends (many of them were either current or past Gulliver students).

The court found that Mr. Snay speaking to his daughter regarding the matter being settled was a violation of his breach of duty of confidentiality. The court found that his daughter then "did precisely what the confidentiality agreement was designed to prevent, advertising to the Gulliver community that Snay had been successful in his age discrimination and retaliation case against the school." Based on the court finding that this was a breach of confidentiality provision, the court did not enforce the agreement. Gulliver did not have to pay Mr. Snay the \$80,000!

The moral of the story: Do not violate a confidentiality agreement provision, especially by a post on social media, which, in this case, is essentially the equivalent of holding a press conference with 1200 interested individuals.

Attorney

- Tracy Armstrong