

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

HOWARD HANNA d/b/a HOWARD HANNA
REAL ESTATE SERVICES,

Plaintiff,

vs.

MICHAEL HORNUNG, an individual,
URBAN COMP ASS, INC., a Delaware
corporation, and COMP ASS
PENNSYLVANIA, LLC, a Delaware limited
liability company,

Defendants.

CIVIL ACTION

No. GD 21-1894



CONSENT ORDER

AND NOW, this 25 day of March, 2021, the parties have AGREED and the Court so ORDERS, without any prejudice to the parties, that:

WHEREAS, Howard Hanna d/b/a Howard Hanna Real Estate Services ("Howard Hanna") filed a Complaint and Motion for Preliminary Injunction, averring that Defendant Michael Hornung ("Hornung") terminated his Manager Contract with Howard Hanna and is now associated with the Defendant Compass Pennsylvania, LLC, Defendant Compass, Inc. f/k/a Urban Compass, Inc. (collectively the "Compass Defendants"), or intends to be associated with the Compass Defendants; and

WHEREAS, Homung's Manager Contract with Howard Hanna included the following restrictive covenants:

4. Restrictive Covenants

The Manager agrees that during the term of employment and for a period of eighteen (18) months commencing on the date of any separation from the Employer, the Manager shall not, directly or indirectly (a) induce or attempt

to induce any manager, real estate licensee, agent or representative of the Employer or its affiliated entities to terminate here [sic] or his relationship with the Employer or its affiliated entities; or (b) employ, hire, or be involved in hiring any such Manager, real estate licensee, agent or representative.

The Manager agrees that, for a period of twelve (12) months, commencing on the date of any separation from the Employer, the Manager will not, without prior written consent of the Employer, either directly or indirectly enter into the employ of, render any services or assistance to, or otherwise become associated with any person or entity in the capacity of residential real estate manager, owner, employee, or otherwise with said person or entity that is, in any respect, competitive with the business of the Employer in any office within a five mile radius around any of Employer's offices in which Manager ever worked as an employee or independent contractor for Employer. Nothing in this paragraph shall prohibit the Manager from working for the Employer as a real estate licensee. The Manager acknowledges that both the length of time and geographic restrictions in the paragraph are reasonable and necessary for the legitimate protection of the Employer in connection with the operation of its business and the manager agrees that she or he has received adequate consideration for the personal covenant not to compete as set forth herein.

Manager agrees that during the period of employment and hereafter, Manager shall not directly or indirectly use or disclose any Confidential Information as herein defined. "Confidential Information" means all information relating to the terms and conditions of this agreement, and all information belonging to, used by, or which is in the possession of Employer or Manager relating to Employer's business to the extent that such information is not intended to be disseminated to the public or is otherwise not generally known to Employer's competitors; and

WHEREAS, the Complaint asserts that the Manager Contract includes non-compete, non-solicitation, and confidentiality provisions that survive the end of the relationship with Howard Hanna, and which are designed to protect Howard Hanna's legitimate business interests **(Complaint, ¶ 23); and**

WHEREAS, the Complaint asserts that Hornung was and is bound during his relationship with Howard Hanna and during the term of post-relationship covenants from using confidential, proprietary, or trade secret information to solicit from clients of Howard Hanna or to solicit any

officer, director, employee, consultant, agent or independent contractor employed or retained by Howard Hanna to leave the employ or retention of Howard Hanna or any of its affiliates (Complaint, ¶ 126); and

WHEREAS, the Complaint asserts that Hornung covenanted and agreed to keep secret and confidential all Confidential Information the agent has or obtains regardless of its type or source unless authorized by Howard Hanna within the scope of their relationship and on Howard Hanna's behalf (Complaint, ¶ 12); and

WHEREAS, the Complaint asserts that the Compass Defendants are aware of that Howard Hanna managers, including Hornung, are subject to written restrictive covenants and confidentiality agreements, which contracts prevent the transfer of the trade secrets and confidential information sought by the Compass Defendants (Complaint, ¶ 32); and

WHEREAS, the Complaint asserts that in the final days and weeks before leaving Howard Hanna and joining the Compass Defendants, Hornung emailed himself and/or otherwise intentionally accessed and copied trade secrets and confidential information of Howard Hanna (Complaint, ¶ 38-41);

WHEREAS, the Compass Defendants deny that they have obtained or attempted to obtain Howard Hanna's confidential, proprietary and/or trade secret information; deny that they have tortiously interfered with Howard Hanna's contracts with Hornung or any other manager or agent; deny that Hornung works or will work in a Compass office that is located less than five miles from the offices in which he worked for Howard Hanna; deny that they have unlawfully interfered with Howard Hanna's actual or prospective business relationships; deny that they have been unjustly enriched at Howard Hanna's expense; deny that they have engaged in any action intended to obtain an unfair competitive advantage over Plaintiff; deny that they have taken, or conspired to take, any

actions intended to, bann Howard Hanna; and deny that they have otherwise engaged in any wrongdoing or misconduct toward Howard Hanna;

WHEREAS, Hornung denies any wrongdoing and denies that he has violated the terms of his Manager Contract with Howard Hanna; and

NOW THEREFORE, Defendants, without admitting or denying to the allegations in the Complaint or as set forth above, agree as follows:

1. For a period of twelve (12) months beginning on February 27, 2021, Defendant Michael Hornung shall not, without prior written consent of Howard Hanna, directly or indirectly enter into the employ of, render any services or assistance to, or otherwise become associated with any person or entity, including but not limited to Compass, Inc., and Compass Pennsylvania, LLC, in the capacity of residential real estate manager, owner, employee, or otherwise with said person or entity that is, in any respect, competitive with the business of Howard Hanna in any office within a five (5) mile radius around the Howard Hanna offices where he worked, i.e., Howard Hanna's Adams Township/Seven Fields office and Howard Hanna's Butler office;

2. For a period of eighteen (18) months beginning on February 27, 2021, Defendant Michael Hornung shall not, directly or indirectly induce or attempt to induce any manager, real estate licensee, agent or representative of Howard Hanna or its affiliated entities to terminate his or her relationship with Howard Hanna or its affiliated entities; and/or employ, hire, or be involved in hiring any such manager, real estate licensee, agent or representative away from Howard Hanna;

3. Except as part of this litigation, Defendant Michael Hornung will not use or disclose any Confidential Information. For purposes of this Consent Order, "Confidential Information" means any information relating to the terms and conditions of Defendant Homung's Broker - Manager Contract with Howard Hanna, and all information belonging to, used by, or which is in

the possession of Hornung relating to Howard Hanna's business to the extent that such information is not intended to be disseminated to the public or is otherwise not generally known to Howard Hanna's competitors;

4. Defendants Michael Hornung, Compass, Inc., and Compass Pennsylvania, LLC will not directly or indirectly possess, misappropriate, sell, transfer, disclose or otherwise use Howard Hanna's valuable trade secrets or Confidential Information;

5. Defendant Michael Hornung will provide an accounting to the Court identifying any and all Howard Hanna valuable Confidential Information downloaded, or removed from Howard Hanna by Defendant Hornung from January 1, 2021 through February 27, 2021;

6. Defendant Michael Hornung will certify in writing to Plaintiff's counsel that he has not disclosed any Confidential Information taken from Howard Hanna to any third person or entity;

7. Subject to a Protective Order entered by the Court, Defendant Michael Hornung will submit for forensic examination analysis two (2) personal laptops, (1) cellular phone, any other computer or tablet, if any, he used including those of other family members while associated with Howard Hanna to conduct Howard Hanna business, and his Hotmail, Gmail, Yahoo and Howard Hanna email accounts utilized from January 1, 2021 through February 27, 2021, for forensic examination to be conducted by a mutually agreeable third party vendor based upon a mutually agreed upon protocol. In the event the parties are unable to agree on a third-party vendor, they will submit their top three choices to the Court for its consideration and selection. In the event the parties are unable to agree to an appropriate protocol for the examination, the parties will each submit their proposed protocol to the Court for consideration. The Court will schedule argument as necessary to discuss the parties' positions and enter an appropriate protocol; and

8. Defendant Michael Hornung will return to Howard Hanna or certify the destruction of all documents, files and/or folders or the like that Defendant Hornung removed or copied from Howard Hanna's computers or offices, including but not limited to any and all copies of emails, hard drives, external hard drives, thumb drives or other data storage devices;

9. Defendant Compass Pennsylvania, LLC and Defendant Compass, Inc. fklka Urban Compass, Inc. will each certify in writing to Plaintiff's counsel that they, including their agents, officers, directors, managers, or employees, have never had and will not obtain in the future any documents, files and/or folders or the like that Defendant Hornung removed or copied from Howard Hanna's computers or offices; and


10. Each party is responsible for their own attorneys' fees and costs as it relates to this Consent Order.

BY THE COURT:

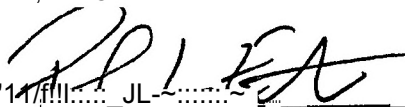
Christine Ward, J.
The Honorable Cluistine Ward

CONSENTED TO:-

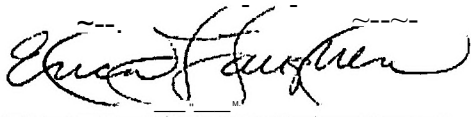
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