

Distributor: Contract to not sell in restricted territory breached

Arbitration panel agrees supplier's vendor network was knowingly usurped

By: Michigan Lawyers Weekly Staff in Verdicts & Settlements October 28, 2011

In a breach-of-contract action filed with the American Arbitration Association, plaintiff Heat Controller International, LLC (International) sought monetary damages from defendant Heat Controller, Inc. (HCI) for soliciting and purchasing from restricted vendors, in addition to selling products in plaintiff's exclusive territory.

Defendant filed a counterclaim and sought monetary damages for alleged breaches of the parties' contract, including a claim for violating the non-competition provision as to sales of product to one of HCI's customers in the U.S.

International had a global supply-and-distribution network — with an emphasis on Asia — for air-conditioning equipment that had been developed over the course of many years. In 2002, International entered into a contract with HCI to supply air-conditioning goods to HCI and to sell HCI's goods outside the U.S. and Canada. The contract also precluded International from selling HCI name-brand products in the U.S. to anyone other than HCI.

The agreement also required the parties to treat the identity of their respective customers and vendors as confidential; required them to treat each other as fiduciaries as to confidential information; and prohibited both parties from soliciting, buying from and/or selling to each other's former, current or prospective customers and/or vendors during the term of the contract and for three years after its expiration (the non-solicitation clause).

During the term of the contract, HCI obtained the names and contacts of International's vendors in Asia. After several years of abiding by the contract, plaintiff asserted that HCI determined it could reduce its costs by purchasing products directly from International's vendors. Accordingly, HCI attempted to negotiate a new deal with International or buy out of the non-solicitation clause, but the parties failed to reach an agreement.

Despite failure to agree to rescind the non-solicitation clause, plaintiff contended HCI began to directly solicit and purchase from International's vendors, many of whom had been introduced to HCI by International.

International asserted that HCI usurped its vendor network, and that HCI knowingly sold products to a distributor who intended to, and did, sell in International's territory.

The arbitration panel ruled in favor of plaintiff on its primary claims for breach of the non-solicitation clause and breach of the exclusivity clause, in the amount of \$2,316,982. Of its original 21 counterclaims, defendant abandoned and/or lost all but one, with the tribunal awarding defendant \$306,000 related to the sales of product to one of its customers, making plaintiff's net award \$2,010,982.

Type of action: Breach of contract

Type of injuries: Monetary

Name of case: *Heat Controller International, LLC v. Heat Controller, Inc.*

Court/Case no./Date: American Arbitration Association; 50-181-T-00430-09; Sept. 8, 2011

Tried before: Arbitration tribunal

Names of arbitrators: Carl von Ende, Fred M. Mester, Lawrence R. Abramczyk

Arbitration award: \$2,316,982 on plaintiff's claim, \$306,000 on defendant's counterclaim, for net plaintiff's award of \$2,010,982

Attorneys for plaintiff: E. Powell Miller, Martha J. Olijnyk, David B. Viar

Attorney(s) for defendant: Withheld

Tagged with: BUSINESS LAW



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