

# Non-Competition in State Court

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FBR is not the only recent non-competition case with bad facts for the former employee, but the preliminary ruling in *Virginia Academy of Fencing, Inc. v. Sintchinov* was considerably less favorable to the former employee.

On August 27, Fairfax Circuit Court Judge Jonathan Thatcher overruled defendants' demurrer to most of a six-count complaint arising from the alleged breach of a contract containing a non-competition agreement.

Between 2005 and 2008, Alexei Sintchinov was employed by the Virginia Academy of Fencing ("VAF") as a fencing instructor. Sintchinov's employment contract provided that "Employees do not sell equipment or teach fencing outside of [VAF]." Despite the agreement, and during its term, Sintchinov began teaching at competitor academies and solicited and accepted direct payments from VAF's students. He also assisted two individuals in organizing International Fencer Council ("IFC"), an academy that competed directly with VAF.

VAF learned of Sintchinov's conduct in December 2008 and confronted him. Sintchinov admitted his conduct and refused to assure VAF that he'd cease competition. Thereafter, he continued to solicit VAF's students on behalf of IFC, an entity in which he allegedly had a hidden interest.

VAF sued Sintchinov, IFC and IFC's principals. The claims included breach of contract, breach of fiduciary duty, and injunctive relief against Sintchinov; and tortious interference with a business, statutory conspiracy, and civil conspiracy against all defendants. Defendants demurred to all counts.

Judge Thatcher overruled the demurrer to the tortious interference and both conspiracy counts as to all defendants.

As to Sintchinov, the court found the non-competition agreement to be unenforceable as overbroad, but ruled the fiduciary duty claim to have been sufficiently pled to support a claim for punitive damages because Sintchinov's contract, if broken as alleged, was sufficiently willful or wanton to support a claim for punitive damages.

Much like Ms. Short in FBR, Sintchinov argued that injunctive relief is not available absent a showing of irreparable harm. Judge Thatcher noted that plaintiff had alleged that "Sintchinov has acquired the names and addresses of many of Plaintiff's students and has solicited them to leave Plaintiff's instruction and take instruction from him, or from Plaintiff's competitors;" an allegation that Judge O'Grady surely would have viewed as insufficient, since no actual harm was alleged. He also found that "in the agreement the parties appear to agree that breach of the agreement will result in irreparable harm."

Most well drafted non-competition agreements include similar language. One wonders if Judge O’Grady would have felt constrained to accept a conclusory, pre-breach representation of this sort without close inspection of the facts. It seems doubtful that Judge O’Grady would have granted the injunction based upon these facts.