



Internal Investigations ♦ Trade Secrets ♦ Employment Litigation

Noted Case

Krumwiede v. Brighton Associates

United States District Court for the Northern District of Illinois Case No. 05 C 3003: CHARLES A. KRUMWEIDE, an individual v. BRIGHTON ASSOCIATES, LLC, and ISMAEL C. REYES, an individual.

Digest of May 8, 2006 Public Record Delivered by Judge J. Ashman

What began as an employee's claims for breach of an Employment Agreement and backpay resulted in a counterclaim alleging tortious interference, breach of non-compete and confidentiality duties, and violation of the Illinois Trade Secrets Act. Brighton Associates claimed that Charles Krumwiede went to work for a competitor and misappropriated a business opportunity with a potential client, and consequently sought to recover the laptop computer that Krumwiede used when he worked for Brighton in order to determine whether Brighton's data was improperly used. Krumwiede refused to produce the laptop despite Brighton's preservation letter demanding that Krumwiede immediately cease using the laptop and that any changes to the contents of the laptop would be regarded as deliberate spoliation of evidence.

After a motion to compel was filed by Brighton's attorney, Greenberg Traurig, the Court ordered that a neutral third party computer forensics firm, Forensicon, Inc. (<http://www.forensicon.com>), be allowed to inspect the computer. Forensicon created a forensic copy of the hard drive, and issued a report identifying numerous instances of files accessed and deleted, and connection of external devices which suggested transfer of files to other computers. Forensicon also found instances of defragmentation, and further tracked activity of ZIP files with suspicious filenames which were deleted and overwritten. Krumwiede attempted to suggest that Brighton's counsel compromised the neutrality of Forensicon by coaching Forensicon's employees and meddling in the creation of Forensicon's expert report. The Court held that neither counsel's contact nor prior dealings with Forensicon compromised the neutrality of the investigation and report, as evidenced by the consistency of the initial and final versions of the expert reports.

Decision

The Court also held that Krumwiede's actions amounted to willful and bad-faith spoliation of evidence and warranted a default judgment in favor of Brighton Associates. In deciding between default and lesser sanctions, the Court considered prejudice to Brighton, prejudice to the judicial system, deterrence and punishment. Krumwiede's conduct showed blatant contempt for the Court and a fundamental disregard for the judicial process which could only be adequately sanctioned with a default judgment. In addition, Brighton was entitled to an award of costs and fees relating to its Motion for Sanctions, including fees paid to Brighton's attorneys and Forensicon.