

## ***Employer Hit with High Damage Award due to a Failure to Provide a Reference Letter and an Onerous Non-Competition Provision***

Mr. Nemirovski, a 40 year old product manager at Socast Inc. (the “Company”), was terminated without cause after 19 months of service. It took Mr. Nemirovski more than nine (9) months to find alternative employment, which ultimately paid less than his previous job. The Company refused to provide a reference letter and the employment contract had an onerous non-competition provision which resulted in Mr. Nemirovski having to turn down alternative employment. Mr. Nemirovski proceeded to bring a claim for wrongful dismissal damages.

Mr. Nemirovski’s employment was governed by two employment contracts. The Court found that neither contractually limited his entitlements upon termination, and he was entitled to common law reasonable notice. One employment contract subjected Mr. Nemirovski to an onerous two (2) year non-competition clause, and there was evidence that he lost the job opportunity as direct result of the non-competition clause. Given the non-competition clause and the Company’s failure to provide Mr. Nemirovski with a reference letter, the Court awarded him nine (9) months’ pay in lieu of notice.

**Key Takeaways:** An employer who acts responsibly and fairly following a termination may be able to avoid additional liability. While the employment contract in this case failed to protect the employer vis a vis the termination provision, the onerous non-competition and the refusal to provide a reference letter came back to bite the employer in terms of the amount of notice awarded. This case also highlights that short-service employees tend to receive a disproportionate amount of reasonable notice from our courts.

As a best practice, we recommend that employers consider providing a reference letter, even if it is only a few positive lines. In addition, employers must be careful when using non-competition provisions, as this may increase the length of the reasonable notice period in the absence of an enforceable termination provision. One option may be to waive the non-competition clause altogether, especially if it’s unlikely to be enforceable.

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