Eaton Vance Sues Advisors Who Jumped to Morgan Stanley

Eaton Vance is suing two former employees from its investment advisory division after they jumped ship for Morgan Stanley.

In a complaint filed in a Massachusetts court, Eaton Vance claims that **Edward Bliss** and **Deborah Moses** violated their employment agreements when they simultaneously resigned for a competing wealth management organization. Eaton Vance alleges that Bliss and Moses plotted to destroy confidential information and solicited clients to follow them.

Eaton Vance is seeking damages and injunctive relief to prevent them from soliciting clients or other employees for a year.

Moses and Bliss joined Eaton Vance's wealth unit, known as **Eaton Vance Investment Counsel**, through the 2004 acquisition of the Boston office of Scudder Private Investment Counsel. Bliss and Moses joined as v.p.s and investment counselors, and both executed non-solicitation agreements that prevented them from soliciting clients for a year after leaving the firm, according to the complaint.

In February of this year Moses and Bliss gave notice to Eaton Vance that they planned to join Morgan Stanley, according to resignation letters submitted in a court filing. Moses is currently registered at Morgan Stanley, according to records from the Securities and Exchange Commission (SEC), but Bliss isn't currently registered

with the SEC or the Financial Industry Regulatory Authority (FINRA). A Morgan Stanley spokeswoman didn't respond to a question about the plaintiffs' current employment status or positions in time for publication deadline.

Eaton Vance claims that Bliss and Moses breached their agreements by soliciting business of clients, and soliciting other employees under their supervision to quit Eaton Vance and join them at Morgan Stanley. As a result, several clients terminated their relationship with Eaton Vance, and three other employees, **Emily J. Murphy**, **Calixto Perez** and **Mary Ann Spadafora** resigned to join them at Morgan Stanley, Eaton Vance claims.

Eaton Vance argues that the case is not subject to compulsory arbitration under FINRA rules because the firm isn't a FINRA member. In addition Eaton Vance Investment Counsel is not a signatory to the broker protocol.

When advisors leave a firm that isn't a protocol signatory, the protections afforded by the protocol agreement don't apply, says **Jonathan Pollard**, a Fort Lauderdale, Fla. attorney focused on competition law including non-compete disputes, who is not involved in the case. That means that their only defense will be to argue that the non-solicitation agreement is not enforceable, he says.

While these types of complaints depend on the facts at hand and the philosophy of the court of jurisdiction, they often end in damages, he says.

"In some situations like this where there is no protocol based defense, there have been some big ticket damages," Pollard says.

Because of the potential for litigation, many wealth firms avoid recruiting advisors out of non-protocol firms unless they have a very significant book of business, or there are mitigating factors that they can use in defense if the prior firm brings a claim, he says.

Defendants in these types of cases may argue that the non-solicitation clause is unenforceable, says **Jaimie Dockray**, an attorney with **Rich Intelisano & Katz**, who is not involved in the case. Relevant factors include whether the agreement is properly tailored, and whether it protects a legitimate business interest.

While different courts may use different criteria to determine whether a restrictive covenant is enforceable, it often comes down to the specific facts of the case and the terms of the agreement.

"Ultimately their enforceability turns on the specific facts of the case and the terms of the restrictive covenant being enforced," Dockray says.

In some cases, a court may opt to narrow the scope of the agreement by “blue penciling”, or crossing out sections of the restrictive covenant that it deems unenforceable, she says.

These types of disputes have become less common in the financial advisory world because of the protocol agreement, says **Christopher Vernon** an attorney with **Vernon Litigation**, who focuses on financial litigation, but is not involved in the case. However, more firms are deciding that they don’t want to participate in the protocol, he says.

"I think in a perfect world, when a financial professional leaves a financial firm, the firm and the financial professional would each

write a letter explaining the situation, and letting the client choose where they want to go instead of fistfights and legal battles over clients," Vernon says. "I think [litigation of who can solicit the clients is] inconsistent with acting in the clients' best interest."

Moses and Bliss could not be reached for comment in time for publication. An attorney listed in Moses' resignation letter didn't respond to an emailed request for comment. An Eaton Vance spokeswoman and a Morgan Stanley spokeswoman each declined to comment.