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Georgia Court Rules that the Terms of Employment Agreements Trump the Broker Protocol

By John I. Sanders

On June 27th, the Court of Appeals of the State of Georgia issued an opinion in *HA&W Capital Partners LLC et al v. Bhandari et al* that will have significant implications for Georgia-based investment advisers and potentially for advisers outside the state as well.^[1] At issue in the case was whether four investment advisers leaving their employer, which was a signatory to the Protocol for Broker Recruiting (the “Broker Protocol”), were required to provide notice of their departure pursuant to terms in their respective employment agreements or whether the terms of the Broker Protocol rendered those notice terms invalid.^[2] The court held that “the protocol does not categorically invalidate notice provisions in employment agreements.”^[3] Accordingly, the advisers were required to provide 60 or 90 days’ notice before leaving the firm, as stipulated in their respective employment agreements.^[4] If they did not provide the required notice, they will be liable for damages to their former employer.^[5] The immediate effect of the opinion is on Georgia-based investment advisers bound by similar employment agreement provisions. If those advisers wish to leave their current firm for another firm or to launch a new advisory firm, they must provide the required notice or potentially be held liable for damages to their former employer.^[6] Providing notice under such circumstances, of course, complicates the advisers’ departure and efforts to maintain clients through the transition.^[7] The less immediate effect of the opinion is that firms in other jurisdictions are likely to ask courts to apply the same logic as the Georgia court and to reach the same conclusion.^[8] Ultimately, the opinion may lead to additional deterioration of the Broker Protocol and a return to the primacy of individual contracts in regulating adviser migration between firms. Accordingly, advisers are well advised to have an attorney review all employment agreements before they sign them and before they leave their current firms. If you have questions about the terms of the Broker Protocol or the terms of your employment agreement(s), please feel free to contact us directly. **John I. Sanders** is an associate based in the firm’s Winston-Salem office. ^[1] *HA&W Capital Partners, LLC v. Bhandari*, No. A18A0217, 2018 WL 3135295 (Ga. Ct. App. June 27, 2018). ^[2] *Id.* at *1. ^[3] *Id.* at *3. ^[4] *Id.* at *3-4. ^[5] *Id.* at *6. ^[6] Alex Padalka, *Morgan Stanley Court Ruling Complicates Switching Firms*, Financial Advisor IQ (July 6, 2018), http://financialadvisoriq.com/c/2024773/236293/morgan_stanley_court_ruling_complicates_switching_firms. ^[7] Neil Weinberg & Katherine Chiglinsky, *Wealth Advisers Face Obstacle to Job-Hopping After Court Ruling*, Bloomberg (July 3, 2018, 5:00 AM), <https://www.bloomberg.com/news/articles/2018-07-03/wealth-advisers-face-obstacle-to-job-hopping-after-court-ruling>. ^[8] *Id.*