

SHORT FORM ORDER

NEW YORK SUPREME COURT : QUEENS COUNTY

P R E S E N T : HON. JOSEPH P. DORSA IAS PART 12  
Justice

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ACADEMY FIRE PROTECTION, INC.,

Plaintiff, Index No.: 25303/06

- against - Motion Date: 1/10/07

DEBRA S. GLENN and TASHALA MALONE, Motion No.: 1

Defendants.

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The following papers numbered 1 to 7 on this motion:

	<u>Papers Numbered</u>
Plaintiff's Order to Show Cause-Affirmation- Exhibit(s)-Service	1-5
Defendants' Reply	6-7

By order to show cause, plaintiff seeks a preliminary injunction, restraining defendants pursuant to CPLR Article 63 from 1) selling fire protection goods and services to plaintiff's customers; 2) soliciting plaintiff's customers.

Defendants, pro se, file response in opposition.

Plaintiff, Academy Fire Protection, Inc. (Academy Fire), is a domestic corporation, with principal offices in Maspeth, N.Y. Defendants Debra Glenn (Glenn) and Tashala Malone (Malone) are former employees of plaintiff.

Academy Fire is in the business of selling fire protection equipment and services to businesses on a national basis. Defendants were hired, Glenn on June 20, 2006, and Malone on July 25, 2006, to work out of the plaintiff's Arizona office selling to and servicing plaintiff's customers in Arizona. Both defendants signed, on the date of their hire, a non-compete agreement, wherein they agreed not to sell or solicit business

for themselves or others from plaintiff's customers during the period of their contract or for six months after its expiration.

Plaintiff's customers were defined as any entity with whom they engaged in business for a period two years prior to effective date.

Glenn was terminated by Academy Fire on September 12, 2006; Malone on September 25, 2006.

Plaintiff alleged that in violation of the non-compete agreement, defendants engaged plaintiff's customers, in particular, Motel 6, an affiliate of Accor, on or about October 23, 2006, on behalf of their new employer, Liege Corp., or at the very least, have stated an intention to do so.

In response, both defendants maintain that they are simply trying to earn a living, that they were not in direct contact with any of plaintiff's customers as part of their work assignments, and that, in fact, they have no knowledge of or list of who Academy Fire's customers might be.

Although plaintiff seeks money damages, as well as equitable relief in their summons and complaint, no claim for such is made as part of this order to show cause and no proof of damages is submitted.

Moreover, plaintiff fails to provide a list of those entities which they would claim to be "customers" by their definition with the exception of Motel 6 and other Accor affiliates.

As defendant Glenn was terminated on September 12, 2006, and defendant Malone was terminated on September 25, 2006, the operative dates for each to be restricted by the covenant not to compete would be March 12, 2007 and March 25, 2007, respectively.

Accordingly, upon all of the foregoing, the motion is decided as follows:

Plaintiff has demonstrated the necessary elements for CPLR Article 63 relief. Olabi v. Mayfield, 8 AD3d 459, 460 (2<sup>nd</sup> Dep't. 2004). Moreover, in the circumstances presented herein by plaintiff, as well as defendants, the restriction as outlined below will serve the reasonable purpose of enforcing... "an appropriately limited anti-solicitation restraint," while at the same time allowing defendants to earn a "livelihood." Willis of NY v. DeFelice, 299 AD2d 240, 242 (1<sup>st</sup> Dep't. 2002).

Therefore, due deliberation having been had, and it appearing to this Court that a cause of action exists in favor of plaintiff and against defendants and that plaintiff is entitled to a preliminary injunction on the ground that defendants threaten to do, or are doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action and tending to render the judgment ineffectual, as set forth in the aforesaid decision, it is hereby

ORDERED, that the defendants are enjoined and restrained, from doing or suffering to be done any of the following acts:

Through and including the date of March 12, 2007 as to defendant, Debra Glenn, and through and including the date of March 25, 2007 as to defendant, Tashala Malone, manage, control, participate in, consult with, render service for, solicit, accept, aid or in any way engage in business activity concerning the selling of fire protection goods and services to Motel 6 or any other affiliates of Accor.

Dated: Jamaica, New York  
March 9, 2007

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**JOSEPH P. DORSA**  
**J.S.C.**