

Hard Case

Employee contracts continue to perplex salon owners. Are they sensible or useless? Your gut reaction to the case of Lois Burak will tell you whether contracts are right for your business or not.

BY VICTORIA WURDINGER

Many salon owners say employee contracts don't work: Stylists don't want to sign them, they can create ill will and they don't always hold up in court. So why bother?

People have a right to work, and an overly restrictive contract denies that right. Yet what's overly restrictive varies widely from city to city, suburb to suburb.

But if your contract is not overly burdensome *and* protects legitimate assets, chances are, it'll fly.

And there's the rub. In a salon, where are the assets?

Most owners feel that their biggest business assets are sitting in the styling chair, listed on the week's book, fully identified in a computer data base. But in the legal world, client aren't generally regarded as assets—after all, they have the right to go to any salon they choose—and most arbitration boards and judges will look for documented proof of damages that occur when client “assets” are compromised.



The case of Lois Burak, owner of Beautyworx Salon and Day Spa in Philadelphia, illustrates perfectly the importance of asset protection and documentation. Unfortunately, it also clearly illustrates what can happen to salon life if an owner does not act swiftly. >>>

A caveat: There are many individual issues this case does not and cannot address, such as allowable geographic restrictions for a given area, specific job limitations and state laws and instances where a contract was broken, but damages could not be shown. To address those issues, contact a local labor-law attorney to review your contract before you ask employees to sign it. Employees should do the same before signing. That in mind, here's how the case went down:

BACKGROUND

Lois Burak opened Beautyworx in 1986; in 1990, she split with a partner and relocated, maintaining the original staff. Burak created a salon that was recognized as being unique in her area—a full-service urban retreat with a boutique atmosphere.

She advertised widely, using radio spots and local newspapers. In her print ads, she created a unique look that local ad department employees told her other salons admired. She promoted individual stylists, building their books and paying for their education.

As time went on, Burak added a website, which drew clients from a wide area. Her attorney, Salvatore Paparone of Paparone and Associates



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in Philadelphia, says her uniqueness, her advertising and the fact she built individual books distinguished her business from other salons and helped her case substantially.

"She worked hard to promote her business, treated it as an asset and invested in her assets," Paparone says.

"Just because someone walks in your door doesn't mean you did anything special to attract them. Lois Burak not only invested in her client base through advertising, charity donations and the creation of a unique atmosphere, she also did everything she could to protect her business.

"For instance, as part of salon policy and her contract, her client list was not given out," says Paparone. >>>

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TIME LINE IN REAL TIME

1996: THE CONTRACT

Burak has a family friend, a criminal attorney, draw up an employment agreement that included acknowledgement an employee would receive substantial consideration for employment, plus confidentiality and a non-compete agreement. A "severability" clause notes that if any term of the agreement is deemed unenforceable, such a determination would not affect the remaining terms of the contract. Because Burak asks her employees to sign the contract after the fact of employment, she offers compensation in the form of higher commission.

2000: SMOKE SIGNALS

A key stylist who had come to Burak straight out of school and now has a large following



starts exhibiting discontent. The feeling becomes infectious. While two bridal parties are in the salon, one stylist orders breakfast, and most of the staff retreats to the break room, leaving clients in the chairs. Staff meetings don't help; no one shows enthusiasm over the announcement of intent to expand to a second >>>



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location. Months pass, then a client tells Burak's manager she heard a key stylist was opening her own salon. The stylist in question denies it.

MID-2000:

THE CONFUSION

Burak starts asking various attorneys for advice. Despite the fact Pennsylvania is a fire-at-will state (employers can terminate employees at any time, for any reason), several lawyers ask, "What would you gain by firing her now?" They don't encourage acting on rumors. Burak talks to all the stylists in private, and one gives up the alleged location of the key stylist's new salon. The key stylist says she's just looking to buy property. Tension is palpable for several months.

SEPTEMBER 2001:

EXIT ONE

The key stylist leaves, making a scene, according to Burak, who adds that the stylist later claims she was fired. The stylist is denied unemployment.

OCTOBER 2001:

THE FOLLOWING

A second stylist leaves, joining the key stylist in her new venture, a mile-and-a-half away from Burak's salon. In December, an esthetician leaves to act as an independent contractor at the new salon.

DECEMBER 2001:

THE CASE

Burak, who by now has filed suit, finds a new attorney to represent her. She needs a contract specialist.

The former key stylist tells the new attorney that she was fired. She also says >>>

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10 percent was taken off the top of her tickets for supplies; therefore, Burak owes *her*. Somehow, a rumor spreads that Burak uses students to work on clients; to this day, she says, she gets requests to “not put me with a student.” Some locals avoid both salons. Burak reaches out through Internet chat boards to fellow salon owners and gets support.

Her new attorney likes her case when he observes her investment in her assets and understands the uniqueness of her operation. He uncovers Pennsylvania cases in which salon contracts were upheld.

As motions are filed, the attorney encourages Burak

to document her business losses. Daily tickets, salon bookings and revenues become important substantiation of business loss because they can be used for before-and-after comparisons. Burak also documents the costs of re-training new employees.

The attorney argues Burak’s suit as a pure contract case. Depositions are taken. The former key stylist countersues, claiming Burak breached the contract. (She later drops the suit.) Burak’s tax returns are subpoenaed.

During depositions, the former key stylist and the second stylist who left Burak to join her say the esthetician is an independent contractor; therefore, she was not hired away. After depositions, the esthetician says she’ll settle out of court, then reneges. Her case is separated from the original one.

DECEMBER 2002: D-DAY

In Pennsylvania, the case goes to an arbitration panel. The first question the arbitration officer asks Burak: “How are you going to show damages?” All the evidence is presented—taking more time than >>>

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expected. Fifteen minutes after everyone leaves the room, the panel rules in Burak's favor. The stylist must pay \$7,000; the second stylist must pay \$2,500.

APRIL 2003:

THE AFTERMATH

The former key stylist has paid her judgment; the second stylist has yet to pay. The esthetician's case is set to go to arbitration soon. Burak has a new contract for future use—her original had not asked for the attorney's fees.

LESSONS LEARNED

Today, Burak is glad she enforced her contract, but realizes she let an ugly situation go on far too long.

"Don't be held a prisoner," she advises. "Also, do your homework. I was able to connect with other salon owners, who offered good advice."

Regarding the situation, Paparone says proving damages are key and that business owners have a legitimate interest in protecting their assets. However, there are many "soft" or subjective areas, and related case laws have gone both ways. In Burak's case, he could

make a direct correlation between the stylists leaving and loss of business.

"It all comes down to the facts," stresses Paparone. "In this instance, there was a significant investment in the clients and the business, and a contract. A person left, opened nearby salon and took clients and staff. And, we could prove the damages. The operators under contract produced a certain percentage of gross revenue, and we documented a drop in both gross and net revenue in the time it took to rebuild the business."

"Many salons don't keep good records, and if you can't prove damages, you could win the case but no money."

As for those who wonder why Burak didn't just fire the key stylist as soon as she got wind of the new salon, this, too, goes to state law. Paparone says if Burak had fired the employee, the stylist probably would have been able to collect unemployment; plus the possibility of the contract being upheld would have been diminished.

No one ever said protecting a business is easy. 