

THE STATE OF NEW HAMPSHIRE
Southern District of Hillsborough County

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NOTICE OF DECISION

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08-E-0265 EqualLogic, Inc. v. Richard C. Shea

Enclosed please find a copy of the Court's Order dated 12/29/2008
relative to:

Motion to Clarify

12/30/2008

Marshall A. Buttrick
Clerk of Court

cc: Kevin M Fitzgerald Esq
David Conforto, Esq

DEC 31 2008

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
SOUTHERN DISTRICT

SUPERIOR COURT
No. 08-E-265

EQUALLOGIC, INC.

v.

RICHARD C. SHEA

ORDER

Before the court is a motion to clarify whether an injunction issued on September 9, 2008 is a final order of the court, and, in the alternative, if it is not, to request permission for an interlocutory appeal. Neither party sought reconsideration of the August order. On October 9, 2008, Mr. Shea appealed to the New Hampshire Supreme Court. The appeal was rejected on October 29, 2008, because it did not appear to the appellate court to be a final order. The pending motion was filed on December 4, 2008.

Upon review of the issues the respondent seeks to raise in the Supreme Court and the prior submissions of the parties, this Court concludes that it erred and did not apply the correct standard in reviewing whether a preliminary injunction should issue. The Court's focus was too narrowly focused on maintaining the *status quo*, which its very broad injunction was intended to do. It did not consider whether the respondent established a likelihood of success on the merits that Mr. Shea breached his contractual duties to EqualLogic, whether EqualLogic was in immediate danger of irreparable harm, and whether EqualLogic had no adequate remedy at law. In their


initial pleadings, the parties did not disagree that this long established equitable test should apply.

The court now finds that EqualLogic has not demonstrated a likelihood of success on the merits or that EqualLogic is in danger of irreparable harm. Although prior employees of EqualLogic, who previously joined LeftHand, may have dishonored their contractual responsibilities, there is nothing to suggest that Mr. Shea has or will do the same. The petitioner is speculating that Mr. Shea's presence at a meeting with a current LeftHand client was to sabotage EqualLogic's effort to convince the client to avail itself of EqualLogic's services and that his knowledge of EqualLogic's customer base will be used to its detriment, contrary to the contractual terms.

Accordingly, the preliminary injunction is VACATED. This is not a final order. The remaining request for relief is moot.

So ordered.

December 29, 2008


DIANE M. NICOLOSI,
Presiding Justice