

# Morgan Stanley Rushes to Hamstring Another Fleeing Broker

by Mason Braswell

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Getty Images

In another action that some lawyers see as a newly aggressive attempt to intimidate brokers from leaving at a time when it has scaled back hiring, Morgan Stanley rushed to court over the weekend to prevent an adviser from calling clients at his new independent practice.

John Louis Fitzgerald, who resigned on Friday from a Morgan Stanley branch in southern New Jersey to affiliate with independent broker-dealer Commonwealth Financial Network, signed an employment agreement prohibiting him from soliciting customers for one year, the firm asserted in a federal court filing on Sunday seeking a temporary restraining order and/or injunction.

“Significantly, he agreed that he would ‘not, at any time assert any claim of ownership or other property interest in any Trade Secrets or other Company Records,’” the complaint says.

The complaint revives a long-simmering battle between brokers and firms over who “owns” a customer relationship and adds teeth to a new ferocity that Morgan Stanley and some of its rivals showed in the past months by [dropping out of the Protocol for Broker Recruiting](#), employment lawyers said. The pact allows advisors to take rudimentary client-contact

information with them when they join other signatory firms.

Commonwealth is not a Protocol member and Fitzgerald does not appear to have been a high-echelon broker, based on his Morgan Stanley biographical information that does not include a corporate title tied to revenue production. But the wirehouse is likely pursuing relatively small cases to intimidate [rivals of all sizes](#), whether they are in or out of the Protocol, and large as well as small brokers, lawyers said.

“Morgan Stanley has picked a fight with a very small independent who realistically doesn’t have the wherewithal to engage in battle,” said Tom Lewis, a lawyer with Stevens & Lee in New Jersey who often represents brokers against employers and is not involved in the Fitzgerald case.

“From an optics point of view, Morgan Stanley is sending the message that it’ll look real close and get aggressive.”

A Morgan Stanley spokeswoman declined to respond, or to discuss the firm’s parallel filing of an arbitration complaint against Fitzgerald seeking a permanent injunction and damages.

A spokeswoman at Commonwealth did not respond to a request for comment on whether it will support Fitzgerald’s defense.

Reached at his new office in the rural community of Vineland near his old office, Fitzgerald declined to comment on the attempt to quash his new business or the size of his practice at Morgan Stanley. He had worked at Morgan Stanley for nine years, according to his BrokerCheck history.

The firm in early 2016 [named Fitzgerald to its Pacesetters Club](#) “for financial advisors who, within their first five years, demonstrate the highest professional standards and first class client service,” according to a southern New Jersey site. Morgan Stanley’s 2017 compensation plan says that advisors with Fitzgerald years of experience must produce \$350,000 to qualify as a Pacesetter. (His BrokerCheck record says he has more than double the experience level outlined in the Pacesetter article.)

The court action is at least the second Morgan Stanley has taken against a non-star broker who left for a non-Protocol firm since it dropped out of the pact in late November. It won a restraining order against a [Florida broker who briefly worked](#) at a foreign bank-owned broker-dealer before he was terminated by that firm.

Morgan Stanley’s arguments in the Florida case appeared more substantive. It accused the Florida broker of printing out 14 pages of names, cellphone numbers and e-mail addresses and sending a second list of 200 clients and prospects to his personal e-mail before he resigned.

Its complaint against Fitzgerald accused him only of contacting “Morgan Stanley’s customers by both telephone and email within an hour or so of his resignation” on Friday morning, citing a statement from one customer that he or she “knew it was coming.”

The arguments that Morgan Stanley made to the New Jersey court, nevertheless, are so pungent that it appears the firm is sending a message to its more substantive advisers that it will pursue

them if they join a large competitor or a firm still in the Protocol with the argument that they developed and nurtured a customer relationship.

“Unless Fitzgerald is enjoined from using the customer information he misappropriated and from soliciting Morgan Stanley’s customers, the threat of irreparable harm is beyond doubt,” its complaint says. “Fitzgerald’s solicitation of Morgan Stanley’s customers will destroy the benefits of the resources Morgan Stanley has invested over many years to develop these relationships and goodwill. No price tag can be placed on the destruction of the benefits Morgan Stanley has accrued from such efforts and Morgan Stanley now faces losses that cannot be calculated.”

The lack of specifics are telling, said David Gehn, a lawyer at Ellenoff Grossman & Schole in New York City who is not involved in the case.

“I figured there would be a substantive affidavit from an advisor at Morgan Stanley who spoke with a client indicating that they were solicited or from a manager saying that they were aware of a particular misconduct,” he said. “It doesn’t exist [in the initial complaint].”

—*Jed Horowitz contributed to this story.*