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Dan Majerle seeks severance, sues GCU for breach of contract

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Dan Majerle has been something of a household name in Arizona since being drafted by the Phoenix Suns in 1988 under the ownership and management of Jerry Colangelo. Majerle's career seemed to come full circle when Colangelo recommended him to be the head coach at Grand Canyon University (GCU). He and GCU celebrated several successful seasons without issue, but it all came to an abrupt end on March 12, 2020, when a losing season seemingly resulted in his abrupt termination. Notably, the media was surprised, and the firing made headlines in the state, even amidst the news of the spread of COVID-19 and the cancellation of the professional and college sports seasons. Two months later, headlines erupted again when the coach's counsel shared copies of his breach of contract complaint with the media before serving GCU.

Basis for litigation?

Not surprisingly, Majerle's complaint asserts his performance was nothing less than stellar throughout his tenure. The complaint also alleges GCU terminated his employment "without any advance notice," claiming it "was moving in another direction."

According to the complaint, Majerle is entitled to severance including his full salary (and pay increases), bonuses, and group healthcare coverage from the date of his discharge until May 31, 2023.

Entitled to severance?

Arizona is an at-will employment state, however, meaning one can be fired at any time for any reason so long as it isn't an illegal reason. So, why would Majerle be entitled to three years of severance benefits?

The parties can expressly provide the employment relationship (1) remains "at-will" or (2) defines (or covers) a specific term. Majerle initially signed a four-year contract (until 2017). Then, several extensions resulted in the contract ending in May 2023.

If an employment agreement modifies the at-will relationship, employers must consider how the arrangement is terminable (e.g., with or without cause and/or with or without notice). A "cause" provision should provide you with enough latitude to determine what is a sufficient cause for termination and be broad enough to cover all avenues of misconduct and performance deficiencies by the employee.

Generally speaking, "opportunity to cure" provisions—which Majerle claims was in his contract—invite disputes over whether an employee was properly notified, given an opportunity to "cure" the alleged deficiency, and terminated for cause. The disputes often lead to litigation, as evidenced by the coach's complaint. He alleges he wasn't provided with sufficient notice or given a 30-day opportunity to cure any alleged act or omission.

At the time of this writing, GCU hasn't responded to Majerle's complaint. It has issued a public statement, however, noting "the University is prepared to defend itself" but refusing further comment until it receives the complaint. Right now, we have but one side of the story, so only time will tell.

Beware of nondisparagement provisions

Majerle is also claiming a breach of the GCU agreement's nondisparagement provision. Employers commonly seek to include such provisions in employment agreements to prevent employees from bad-mouthing the company when the relationship ends. When an employee is represented by counsel, however, the provision is made mutual. In other words, it can work both ways.

Depending on the scope of the mutual nondisparagement provision, employers place themselves at risk of liability when an employee—unfamiliar with the clause's existence—says something disparaging about a

colleague. Trouble also can arise if a company representative forgets the provision exists.

Either way, a comment placing an employee like Majerle in ill repute can result in liability against the employer for breach of contract. You should take care to limit the number of individuals with whom a nondisparagement provision applies.

Takeaway

At the start, employment relationships are filled with promise, especially those the parties see fit to memorialize with an employment agreement. Take care to consider all possibilities before agreeing to specific provisions within an agreement that would otherwise remove the at-will relationship. Agreeing to the provisions can prove costly if you aren't ultimately prepared to take the action required by the arrangement.

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