

FTC Appeals Recent Losses in Non-Compete Rule Litigation, and Another Litigant Drops Its Challenge



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We [reported](#) last month that the district court in the northern district of Texas had “set aside” the Federal Trade Commission’s recently [finalized rule](#) prohibiting employers from entering into, and enforcing, non-compete agreements with employees (the Rule). *Ryan, LLC v. Federal Trade Commission*, N.D. Texas, Aug. 20, 2024. *The set-aside operates to enjoin enforcement of the Rule, nationwide.* The FTC, on October 18, gave notice that it will appeal the district court’s ruling to the 5th Circuit.

We also reported last month that the district court in the middle district of Florida had granted a preliminary injunction enjoining the FTC from enforcing the Rule against plaintiff Properties of the Villages. *Properties of the Villages v. Federal Trade Commission*, M.D., Florida, August 14, 2024. On September 24, the FTC gave notice that it will appeal that decision to the 11th Circuit.

Our prior report also reviewed the denial by the district court in the eastern district of Pennsylvania of a request for a preliminary injunction against the FTC’s enforcement of the Rule. *ATS Tree Services LLC v. Federal Trade Commission*, E.D. Pa., July 23, 2024. On October 4, ATS Tree Services filed a notice of a voluntary dismissal of its action. The district court had earlier denied the plaintiff’s effort to stay litigation, pending disposition of the cases in Texas and Florida.

These developments do not affect the Texas district court’s set-aside of the Rule. At present, the FTC cannot enforce the Rule. However, it may continue to bring individual enforcement actions against the use of, or enforcement of, non-compete agreements governing employees and may allege that, in the circumstances of the case, they are either or both of an unfair method of competition or an unfair or deceptive act.