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Conduct Did Not Occur Primarily and Substantially in Massachusetts Under 93A Despite Defendants' Connections to Boston

In *FTI v. Duffy*, three individuals resigned from FTI, LLC and FTI Consulting, Inc. (collectively, "FTI") and went to work for a competing consulting firm called Berkeley Research Group, LLC ("Berkeley"). FTI is a Maryland company headquartered in Washington, D.C., and Berkeley is a Delaware company headquartered in California. Two of the individual defendants resided in Massachusetts and were based out of FTI's Boston office; the other individual defendant was based out of New York but supervised employees in Massachusetts. When they resigned, the individual defendants took numerous FTI employees and clients with them. One half of the professionals who followed the defendants to Berkeley came from FTI's Boston office.

FTI brought suit, alleging that the individuals breached their employment agreements and, along with Berkeley, wrongfully used FTI's confidential information. After trial, the court found that Berkeley had violated Chapter 93A. On appeal, the defendants argued that Berkeley could not be liable for violating Chapter 93A because the conduct at issue did not occur primarily and substantially in Massachusetts.

The Appeals Court agreed and reversed the Chapter 93A judgment. The court focused on the location where the wrongful conduct (Berkeley's encouragement of the collection and use of FTI's confidential information) occurred. The court found that Berkeley "executed most of this scheme during meetings that took place outside Massachusetts." In addition, the recruiter who led Berkeley's efforts was located in D.C. Although one of the individual defendants who used FTI's confidential data to help Berkeley was based out of Boston, the court noted that he performed his job on the road and spent little time in Massachusetts, so that fact was not enough to bring the case within the ambit of Chapter 93A.

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OCM Law 10 Burlington Mall Road Suite 301 Burlington, Massachusetts 01803 United States (781) 359-9000