

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DOUGLAS C. WALTERS, : CIVIL ACTION
 Plaintiff, :
 :
 v. :
 :
KEANE, INC., :
 Defendant. : NO. 00-CV-5521

MEMORANDUM & ORDER

J.M. KELLY, J.

APRIL 2, 2002

Presently before the Court is the Motion for Summary Judgment of Defendant, Keane, Inc. ("Keane"), on all counts of the Plaintiff's Complaint. Plaintiff, Douglas C. Walters ("Walters"), filed this Complaint and alleges: (1) breach of contract and the covenant of good faith and fair dealing; (2) violation of the Pennsylvania Wage Payment and Collection Act, 43 Pa. Con. Stat. Ann. § 260.1-301 (West 1992) ("WPCA"); and (3) age discrimination in violation of the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-626 (1994) ("ADEA")¹, and the Pennsylvania Human Relations Act, 43 Pa. Con. Stat. Ann. §§ 951-963 (West 1991) ("PHRA").

BACKGROUND

Keane is an information technology consulting company.

¹ Since the PHRA utilizes the same analytical framework as cases brought under Title VII and the ADEA, the federal and state law claims will be discussed together. See Kelly v. Drexel Univ., 907 F. Supp. 864, 871 (E.D. Pa. 1995) (noting that PHRA age discrimination claims are properly evaluated under federal law interpreting ADEA).

Walters was hired by Keane as one of forty Business Development Practice Managers in March, 1999. His duties were to focus upon marketing Keane's application outsourcing services. In the summer of 1999, Keane reorganized its application outsourcing positions and made Walters one of ten Area Practice Directors. On December 2, 1999, Walters was terminated. He was verbally told that he lacked the qualifications for his job and a termination letter stated that he was terminated "due to performance." On December 3, 1999, Walters was contacted by a client contact from CGU,² who informed Walters that CGU had decided to use Keane's application outsourcing services. The Account became Keane's largest outsourcing account. Walters never received a bonus or commission based upon the CGU account.

STANDARD OF REVIEW

Under Federal Rule of Civil Procedure 56(c), summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." This court is required, in resolving a motion for summary judgment pursuant to Rule 56, to determine whether "the evidence is such that a reasonable jury could return a verdict for the nonmoving party."

² The parties refer to this client only as "CGU."

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In making this determination, the evidence of the nonmoving party is to be believed, and the district court must draw all reasonable inferences in the nonmovant's favor. See id. at 255.

Furthermore, while the movant bears the initial responsibility of informing the court of the basis for its motion, and identifying those portions of the record which demonstrate the absence of a genuine issue of material fact, Rule 56(c) requires the entry of summary judgment "after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

DISCUSSION

A. Walters' ADEA Claim

Walters alleges age discrimination in violation of the ADEA because he was subjected to intentionally disparate treatment because of his age. The ADEA states that "it shall be unlawful for an employer to . . . discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age." 29 U.S.C. § 623(a)(1). Under his ADEA claim, Walter's prima facie case requires him to prove that he: (1) was over 40; (2) was qualified for the position; (3)

suffered an adverse employment action; and (4) was replaced by people sufficiently young enough to create an inference of age discrimination. See Sempier v. Johnson & Higgins, 45 F.3d 724, 728 (3d Cir. 1995). Although Walters was clearly within the protected age group and suffered an adverse employment action, Keane contends that Walters was neither qualified for the job nor replaced by workers sufficiently young to create an inference of discrimination.

Keane has presented evidence that Walters failed to meet sales expectations and the testimony of his supervisors that he was not qualified for the position of an application outsourcing specialist. The only evidence that Walters has presented to support that he was qualified for his position is a document entitled "Keane, Inc. ISD Sales Rep Performance Appraisal," in which it appears that Walters achieves expectations in all categories. Review of this document indicates that it is, in fact, a self-evaluation. Further, there is no indication of when it was completed or whether it was ever presented to or reviewed by Keane. Finally, this document is not authenticated and there is no indication that it would be admissible at trial.

Accordingly, Walters has failed to produce evidence that he was qualified for his position. Also, Walters has failed to produce evidence that he was replaced by a younger worker. Accordingly, Keane's Motion for Summary Judgment is granted on Walters' age

discrimination claim.

B. Walters' Wage Payment and Collection Act Claim

Walters alleges that he earned a commission upon Keane's sales to CGU and that Keane failed to pay that commission in violation of the WPCA. The WPCA provides that an employee must be paid "as provided in a written contract of employment or, if not so specified, within the standard time lapse customary in the trade or within 15 days from the end of such pay period." 43 Pa. Con. Stat. Ann. § 260.3. Here, it is undisputed that Walters had a written contract that would not allow him a commission on the CGU sale, and to the extent that he was eligible for a performance bonus based upon the CGU sale, Walters failed to meet the necessary performance standards. Walters claims he had a separate verbal agreement with Keane to pay him a commission on the CGU sale. The plain language of the WPCA, however, limits Walters to the terms of the contract, as he has a written contract. See id. Accordingly, Summary Judgment is granted on Walters' WPCA claim.

C. Walters' Breach of Contract & Good Faith & Fair Dealing Claims

Where a full and complete agreement between two parties is encompassed within a written contract, a separate oral agreement that goes to the heart of the agreement is barred by the parol evidence rule. See Mellon Bank Corp. v. First Union Real Estate

Equity & Mortg. Investments, 951 F.2d 1399, 1406 (3rd Cir 1991).

Here, it is undisputed that Walters signed an Annual Incentive Compensation Summary which set forth his sales requirements for an incentive bonus. His claim of a separate oral agreement for a commission if he concluded the CGU sale goes to the heart of how Keane paid Walters. As such, Walters' breach of contract claim is barred by the parole evidence rule.

Under Pennsylvania law, there is an obligation to act in good faith in the performance of a contract. This obligation, as set forth in Restatement (Second) of Contracts, § 205(d), is variable by the context of the contract. Somers v. Somers, 613 A.2d 1211, 1213 (Pa. Super. Ct. 1992). Examples of bad faith, potentially relevant in this matter, include "evasion of the spirit of the bargain . . . willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance." Id. Walters has presented evidence that he arranged the CGU sale and the day before that sale came to fruition, he was terminated for undocumented performance issues. This evidence is sufficient to draw an inference that Keane terminated Walters in order to prevent paying him a substantial incentive bonus based upon the CGU account. Accordingly, summary judgment is not appropriate on Keane's good faith and fair dealing claim.

C. Walters' claim that Keane, Inc. violated the covenant of good faith and fair dealing. This claim remains for trial in this matter.

BY THE COURT:

JAMES MCGIRR KELLY, J.