

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

MADLINE BAYLISS-ALLEN : CIVIL ACTION
v. :
CADENCE DESIGN SYSTEMS, INC. : NO. 99-CV-3240
O'Neill, J. : August , 2000

MEMORANDUM

On May 25, 1999 plaintiff Madeline Bayliss-Allen commenced this action against defendant Cadence Design Systems, Inc. (“Cadence”), her former employer, alleging: a breach of contract claim (Count I); a breach of good faith and fair dealing claim (Count II); a Pennsylvania Wage Payment and Collection Act claim (Count III); and a quantum meruit claim (Count IV).¹ Subsequently, plaintiff amended her complaint to include Count V, a claim for severance pay allegedly promised to her. Oral argument on the issues raised in Cadence’s motion for summary judgment and in plaintiff’s motion to compel the production of documents was heard on March 16, 2000. On June 13, 2000 plaintiff filed a renewed motion to compel the production of documents. Presently before me are Cadence’s motion for summary judgment on Counts I-V, plaintiff’s renewed motion to compel the production of documents, and the parties’ respective responses thereto.² For the following reasons I will grant Cadence’s motion and enter judgment for Cadence. Plaintiff’s

¹ In her memorandum in opposition to Cadence’s motion for summary judgment, plaintiff abandons Count IV. See Pl.’s Mem. at 15. Accordingly, Cadence’s motion for summary judgment will be granted as unopposed with respect to Count IV.

² Jurisdiction is based on diversity of citizenship. 28 U.S.C. § 1332; see Pl.’s Am. Compl.

renewed motion will be denied as moot.

Cadence is an electronic design firm that sells software primarily but also sells its design expertise to aid customers with the development and improvement of their own electronic products. Cadence hired plaintiff in June 1998 as a consulting executive in its sales operations. At that time, plaintiff signed an offer letter stating that Cadence agreed to pay her as compensation an annual base salary of \$100,000 in addition to benefits and stock options. See Daniels Decl., Ex. “B.” Additionally, Cadence provided plaintiff with an opportunity to earn commission payments pursuant to the policy set forth in Cadence’s North American Sales Annual Compensation Plan (“the Plan”). Id. Under the Plan plaintiff could earn three types of commissions: (1) variable commissions, (2) mega deal commissions, and (3) multi-year commissions.³ See Pl.’s Ex. “A” at 20.

In August 1998 Michael O’Brien, plaintiff’s supervisor, asked plaintiff to work on a proposed transaction with Ingersoll-Rand (“IR”). See Madeline Bayliss-Allen (“MBA”) Dep. at 45-46. O’Brien described the transaction to plaintiff as being short-term and expected to close in 1998, as well as being a deal having high potential for Cadence.⁴ See id. at 47. Additionally, O’Brien and Cadence’s vice president of sales Chris Moritz directed plaintiff to focus exclusively on IR, see id. at 170-17, and in a meeting on October 4, 1999 told her that the IR deal, given its importance and

³ Variable or standard commissions are commissions paid to employees for work done on “individual Revenue bookings less than \$5 million.” Pl.’s Ex. “A” at 54. Plaintiff’s goal letter in 1998 set forth her percentage commission rate for that year at 2.5926% of consulting and design services sold up to \$850,000 and 5.183% for revenue above that amount. See Daniels Decl., Ex. “D.” In contrast, Cadence calculated commissions for “mega deals,” “transactions . . . valued at \$5 million or more,” by looking at such factors as: the size of the deal, its profitability, and the employee’s involvement in the transaction. Pl.’s Ex. “A” at 55-56; Reisterer Decl., Ex. “A” at 11.

⁴ On a number of occasions, including as early as the first executive meetings, references were made describing the IR deal as a potentially \$100 million transaction. See MBA Dep. at 51.

size, carried additional compensation separate and apart from commission. See id. at 124-125. The deal did not close until 1999. See id. at 286-87; MBA Aff. at ¶9.

On December 11, 1998, plaintiff alleges that O'Brien and Moritz "actively cajoled" her to accompany them to a New York City gentleman's club. MBA Aff. at ¶16. Plaintiff refused to go and subsequently complained about the incident. See id. Plaintiff discussed with Cadence's human resource manager Gina Cruse, as well as with O'Brien, her difficulty in continuing to work with and report to O'Brien and Moritz in light of their conduct. See MBA Dep. at 58-59, 99, 120-122; MBA Aff. at ¶17. Plaintiff alleges that during those discussions she was informed that she would be given severance if the parties could not agree on a suitable role for her in the future, see id., and claims that after those discussions she did not receive any new assignments. See id. at ¶16.

Cadence then sent plaintiff a proposed "Employment Termination and Release Agreement" on May 7, 1999. See Pl.'s Ex. "K." According to the proposed agreement, plaintiff would be paid \$53,846 in severance pay, a first quarter 1999 commission in the sum of \$45,968, and a "bonus" on the IR deal in the amount of \$30,000, all subject to taxes and conditioned on plaintiff signing the full release. See id. Plaintiff never signed the release. Subsequently, Cadence terminated plaintiff's employment, effective May 8, 1999. Plaintiff never received severance.

In June 1999 plaintiff was paid \$45,968, her standard commission less taxes, for the transactions with IR. Reisterer Decl. at ¶9. Additionally, Cadence offered to pay plaintiff and seven other employees a special bonus for their work on the IR deal. Cadence offered plaintiff a bonus of \$30,000, see Reisterer Decl. at ¶9, but plaintiff refused the bonus check from Cadence. See MBA Dep. at 543.

I may grant summary judgment "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." Fed. R. Civ. P. 56(c). A genuine issue of material fact exists when "the evidence is such that a reasonable jury could return a verdict for the non-moving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The moving party in a motion for summary judgment bears the initial burden of identifying those portions of the record which it believes indicate the absence of any genuine issue of material fact. See Fed. R. Civ. P. 56(e); Celotex v. Catrett, 477 U.S. 317, 322-24 (1986). The non-moving party must then "set forth specific facts showing that there is a genuine issue for trial." Id. While I must draw all reasonable inferences in favor of the non-moving party, see Celotex, 477 U.S. at 255, the non-moving party may not rely upon unsupported allegations or mere suspicions. See id. at 248.

As no genuine issues of material fact exist, I will decide the issues presented by Cadence's motion for summary judgment as a matter of law.

II.

In Count I of the complaint plaintiff alleges that Cadence breached its contractual obligations under the 1998 Compensation Plan ("the Plan") by refusing to pay a reasonable commission to plaintiff based on her participation in the deal between Cadence and Ingersoll-Rand ("IR").⁵ Plaintiff asserts essentially the same claim in Count II, where she claims that Cadence violated its duty of

⁵ I need not determine whether the 1999 Plan, as Cadence argues, or the 1998 Plan, as plaintiff contends, controls plaintiff's claim since I find that the result would be the same regardless of which Plan controls.

good faith and fair dealing by its arbitrary and discriminatory application of the Plan. Plaintiff also maintains that the deal between Cadence and IR was a so-called “mega deal” and that the offer of \$75,968 to plaintiff as compensation for the IR deal was an amount not commensurate with plaintiff’s normal commission rate for a mega deal.⁶

The 1998 Plan provides the following regarding compensation for mega deals:

The 1998 Annual Sales Compensation Plan enables Plan Participants to earn special commissions for transactions which are valued at \$5 million or more. A commission pool will be used for distribution of commissions. The size of the Mega Deal commission pool will be determined by the Executive Vice-president of Worldwide Sales. Business criteria used in determining the commission pool will include, but is [sic] not limited to, deal size, profitability/discount and length of term. Commissions will depend on the level of selling involvement in the deal, and is [sic] at the complete discretion of the Executive Vice-President of Worldwide Sales.

Pl.’s Ex. “A” at 55-56. Under Pennsylvania law the task of interpreting a contract is generally a matter of law to be performed by the Court. See Standard Venetian Blind Co. v. American Empire Ins. Co., 469 A.2d 563, 566 (1983). I therefore have the task of “ascertain[ing] the intent of the parties as manifested by the language of the written instrument.” Id.

Defendant argues that the Plan clearly states that mega-deal commissions are awarded at the executive vice president’s discretion and that plaintiff has failed to put forth any evidence that such

⁶ As Cadence has conceded for purposes of this motion that the IR deal is properly characterized as a mega deal, see Def.’s Mem. at 7, plaintiff’s renewed motion to compel the production of documents is irrelevant to her opposition to Cadence’s motion for summary judgment. Plaintiff’s attorney states in an affidavit that the documents requested in plaintiff’s renewed motion “are necessary to test Cadence’s contention that a transaction is never characterized as a mega deal unless there is a contractual commitment by the client to pay Cadence \$5 million or more.” Mooney Aff. at ¶3. Given Cadence’s position, such further discovery is unnecessary.

discretion was exercised in bad faith.⁷ Plaintiff notes that the Plan fails to define the term “valued” and contends that the meaning of that term is ambiguous and that a jury therefore should determine its meaning. This argument however misconstrues the issue at hand. Even if there is an ambiguity as to how deals become classified as “mega-deals,” that would not mean that the Plan is ambiguous with respect to the awarding of commissions.

Indeed, the relevant language of the Plan is unambiguous and the intent of the parties is clear—the executive vice president of worldwide sales has “complete discretion” with regard to the awarding of commissions. Pl.’s Ex. “A” at 56. Accordingly, under Pennsylvania law Cadence had an implied duty to exercise its discretion in good faith in the awarding of compensation. See Chester Perfetto Agency, Inc. v. Chubb and Son, 1999 WL 972010, at *5 (E.D. Pa. Oct. 21, 1999) (citation omitted).

Plaintiff has not set forth any evidence to show that Cadence failed to act in good faith by offering her \$75,968 in compensation for her work on the IR deal. Plaintiff’s claims rely on the unsupported assumption that the value of the deal is either \$10 million, the amount IR budgeted for the transaction for one year, or \$100 million, the amount O’Brien reported to management that the transaction was worth. However, it is undisputed that Cadence based commissions not on a transaction’s abstract or potential value but rather on the actual “booked” amount.⁸ See Turnbull

⁷ In addition, Cadence asserts that it not only has discretion over the awarding of commissions under the Plan, but also that “[t]he Regional Vice President of sales reserves the right to terminate any Plan Participant’s participation in this Plan at any time with or without cause, and with or without prior written notice.” Pl.’s Ex. “A” at 5, ¶3.

⁸ The Plan itself states that “[c]ommissions will be paid on the net value of the accepted order.” Pl.’s Ex. “A.” Plaintiff acknowledges in her deposition that “accepted order” refers to an order as it is accepted under Cadence’s booking policy, MBA Dep. at 103, and that “total contract value” is “the equivalent of the booking amount” as Cadence uses the phrase. Id. at 110.

Decl. at ¶¶ 3-5; MBA Dep. at 108. It is uncontested that the “booked” amount for the IR deal at the time plaintiff left Cadence’s employment was approximately \$2.5 million (after debooking adjustments). See Turnbull Decl. at ¶¶ 3-5. Plaintiff has not put forth any evidence showing that her commission on the IR deal was significantly less than commissions awarded on similar deals.⁹ As plaintiff has set forth no evidence showing that Cadence acted in bad faith in awarding plaintiff \$75,968 in compensation for a deal with a booked amount of approximately \$2.5 million, I will grant Cadence’s motion and enter judgment for defendant on Counts I and II.

III.

In Count V plaintiff alleges that Cadence owes her severance pay of approximately \$54,000, together with costs, interest, liquidated damages and attorney fees under the WPCL. See Pl.’s Am. Compl. at 7. Plaintiff claims she was assured that she would be given severance if she and Cadence could not agree on a suitable role for her. See MBA Dep. at 58-59, 99, 120-122, 461; MBA Aff. at ¶17. Additionally, plaintiff asserts that in reliance on such assurances she did not contest the propriety of her termination or make any sexual harassment claim. See Pl.’s Mem. at 15.

As plaintiff appears to contend that Cadence had a contractual obligation to pay her severance, she has the burden under Pennsylvania law “to establish the existence of an oral contract

⁹ In addition, I note that Cadence has set forth evidence showing that plaintiff’s compensation was not significantly different than that of her peers. For example, of the eight people who worked on the deal, plaintiff received the third highest bonus. See Reisterer Decl. at ¶7. Cadence offered plaintiff her standard commission for her work on the IR deal in the amount of \$45,968, as well as a bonus for the work she did on the IR deal in the amount of \$30,000. Id. at ¶9. Her direct supervisor, O’Brien, was awarded a bonus of \$100,000 and the program manager, Charles Mendes, was awarded a bonus of \$50,000. Id. The other bonuses ranged from \$5,000 to \$20,000. Id.

by 'clear and precise' evidence.”¹⁰ Gorwara v. AEL Industries, Inc., 784 F.Supp. 239, 242 (E.D.Pa.1992); quoting Browne v. Maxfield, 663 F.Supp. 1193, 1197 (E.D. Pa. 1987). For there to be an enforceable contract, plaintiff must show that both she and Cadence "manifested an intent to be bound, [that the contract] is supported on both sides by consideration, and [that the contract] terms are sufficiently definite." Gorwara, 784 F.Supp. at 242 (citation omitted). Plaintiff has not met her burden under this standard.

Mutual assent in the formation of a contract ordinarily manifests as “an offer or proposal by one party followed by an acceptance by the other party or parties.”¹¹ Restatement (Second) of Contracts § 22(1) (1981). Plaintiff seems to argue that her conversations with Cruse and/or O’Brien on or around December 1998 constituted an oral offer. See MBA Dep. at 58-59, 99, 120-122; MBA Aff. at ¶17. Plaintiff, however, has not put forth sufficient evidence to support this contention. An offer is defined as “the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.” Restatement (Second) of Contracts § 24 (1981). As evidence of the alleged oral offer, plaintiff has provided only her own affidavit and deposition testimony asserting that Cadence employees

¹⁰ Plaintiff does not assert promissory estoppel; even if she did she could not succeed on such a claim because she does not put forth any evidence proving that she forbore claims for wrongful termination or sexual harassment because of Cadence’s alleged “promise.” See Spectacor Management Gp. v. Brown, 1996 WL 571808, at *9 (E.D. Pa. Sept. 26, 1996); Holewinski v. Children’s Hosp. of Pittsburgh, 649 A.2d 712, 714 (1994).

¹¹ While “[a] manifestation of mutual assent may be made even though neither offer nor acceptance can be identified and even though the moment of formation cannot be determined,” such a manifestation exists only if the conduct of both parties to an alleged contract seems to recognize that a contract exists. Restatement (Second) of Contracts § 22 cmt. b, (1981). The evidence plaintiff presents does not, however, show that the conduct of Cadence and plaintiff recognizes the existence of any severance contract.

discussed with her the possibility of her receiving severance if relations between her and O'Brien and Moritz could not be resolved. She has submitted no evidence as to the terms of any such offer nor even asserted that the terms of the alleged agreement were discussed.

Even if I were to construe plaintiff's conversations with Cruse or O'Brien as an oral offer, plaintiff did not accept the alleged "offer." The Restatement (Second) of Contracts defines acceptance of an offer as "a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer." Id. at § 50(1). The offeree must give notice of acceptance or communicate acceptance if the offeror has no way of knowing whether the offeree plans to accept the offer. Id. at § 56. Plaintiff offers no evidence that she did or said anything which would have ever manifested her assent to any alleged oral offer. She did not quit her position at Cadence but rather was fired by her employer. Additionally, plaintiff refused to sign the proposed "Employment Termination and Release Agreement" Cadence sent to her on May 7, 1999.¹² See Pl.'s Ex. "K." As plaintiff has not shown that a contract existed between her and Cadence with respect to her receiving severance pay, I will grant Cadence's motion with respect to Count V as well.

IV.

Under Pennsylvania law an employer must breach a contractual right for an employee to recover under the Wage Payment and Collection Law ("WPCL"), 43 P.S. § 260.1 et seq. See Does v. Kohn Nast & Graf, P.C., 862 F. Supp. 1310, 1325 (E.D. PA. 1994). Accordingly, since summary

¹² The "Employment Termination and Release Agreement" in exchange for the signing of a full release offered plaintiff \$53,846 in severance pay, a first quarter 1999 commission in the sum of \$45,968, and a "bonus" on the IR deal in the amount of \$30,000, all subject to taxes and conditioned on plaintiff signing the full release. See Pl.'s Appendix, Ex. "K."

judgment is proper in defendant's favor on all other Counts, plaintiff's corresponding WPCL claim (Count III) cannot survive.

An appropriate Order follows.

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

MADELINE BAYLISS-ALLEN	:	CIVIL ACTION
	:	
v.	:	
	:	
	:	
CADENCE DESIGN SYSTEMS, INC.	:	NO. 99-CV-3240

ORDER

AND NOW this day of August, 2000, upon consideration of the defendant's motion for summary judgment and the response thereto, IT IS HEREBY ORDERED that defendant's motion is GRANTED. Judgment is entered in favor of defendant Cadence Design Systems, Inc. and against plaintiff Madeline Bayliss-Allen. IT IS FURTHER ORDERED that plaintiff's renewed motion to compel the production of documents is DENIED.

THOMAS N. O'NEILL, JR. J.