

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

JAMES M. NATALE,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
WINTHROP RESOURCES	:	NO. 07-4686
CORPORATION,	:	
	:	
Defendant.	:	

MEMORANDUM

BUCKWALTER S. J.

July 9, 2008

Currently pending before the Court is the Motion of Defendant Winthrop Resources Corporation (“Winthrop” or the “Company”) to Dismiss Counts I, II and IV of Plaintiff’s Complaint and Motion to Strike, the Response of Plaintiff James Natale (“Natale”) and Defendant’s Reply Brief. For the following reasons, the Court will grant the motion in part and deny it in part.

I. FACTUAL AND PROCEDURAL HISTORY

According to the facts set forth in the Complaint, Plaintiff James Natale was offered employment, on January 29, 1999, with Defendant Winthrop, a Minnesota Corporation in the business of leasing computers, telecommunications equipment, point-of-sale systems and other essential business equipment. (Compl. ¶¶ 2,6.) In a written letter of engagement, Frank Gabriele of Winthrop hired Natale for a sales position, based in Trevoese, Pennsylvania, for a Northeastern United States sales territory. (Id. ¶ 7.) Per the offer letter, Natale was to commence his employment with Winthrop on February 15, 1999, and was to be compensated by commissions from the income generated by the leases between Winthrop and its customers. (Id. ¶¶ 5-6.) The opening paragraph

of the letter stated, in part:

We are confident that you will make significant contributions to the growth of our Company and will enjoy the level of success you aspire to. I can assure you that we will do everything possible to assist you in that success.

(Id. ¶ 8.)

During Natale's seven year tenure with Winthrop, however, the Company allegedly backtracked on these assurances and undermined his success. (Id. ¶ 9.) First, when sales personnel located in Trevoise lost their positions or resigned, all the accounts and prospects of the seven departing salespersons were distributed solely to remaining salespersons Frank Gabriele and Jim Carroll. (Id. ¶ 10.) No accounts were ever distributed to Natale, thus causing him to fall statistically in the ranks. (Id. ¶¶ 10-13.)

Furthermore, while Natale was employed with Winthrop, he was given the specific assignment of approximately half of the State of New Jersey as his sales territory. (Id. ¶ 14.) During that time, Natale learned that Winthrop was "surreptitiously permitting an Executive Manager and local inside sales personnel to solicit business for their own personal benefit within the State of New Jersey." (Id.)

In addition, after being in his established territory for almost six years, Natale was reassigned, in the beginning of the second quarter of 2005, to a new sales territory, while his Northern New Jersey territory was divided between Mr. Gabriele and Mr. Carroll. (Id. ¶ 15.) As a result, Natale had to generate new accounts from scratch. (Id.) Natale alleges that the sales territory to which he was assigned was deliberately carved to prevent his success, whereas Mr. Gabriele and Mr. Carroll were given territories providing ample opportunity for success. (Id. ¶¶ 15-16.)

Although the Company understood that it took a minimum of three years to build a territory, Paul

Gendler, another employee of Winthrop, placed Natale on probation and demanded that he meet short-term performance goals. (Id. ¶ 15.) Then, during Natale’s probation, Paul Gendler personally instructed Rob Flynn, the inside sales representative supporting the Trevoise outside sales team, to make “cold calls” on behalf of Mr. Gabriele and Mr. Carroll, but not on behalf of Mr. Natale. (Id. ¶ 17.) Natale also learned that Winthrop management allegedly disparaged his reputation. (Id. ¶ 18.)

Although Natale’s historic profit and/or new accounts were purportedly on par with other employees, Company support for him began to disappear in 2004, when Natale began to object to what he believed were unethical practices by Winthrop. (Id. ¶ 19.) According to the Complaint, Winthrop made its most substantial revenue from customers paying “interim rent” and missing contractual “notice” dates; thus, Winthrop only did business with clients who never leased before or who did not understand leasing. (Id. ¶ 20.) Natale was uncomfortable with the idea of his clients not fully understanding and not being fully apprised of the financial burden of interim rent and missed notice. (Id.) In 2004, he informed Frank Gabriel that he was not holding one of his clients to a twelve month contract extension for missing written notice. (Id. ¶ 19.)

Ultimately, Natale was allegedly advised by Mr. Gendler and Mr. Gabriele that he was too nice a guy and not cut out for Winthrop. (Id. ¶ 21.) Via a “Separation” Memorandum dated January 5, 2006, Natale was terminated for failing to generate new accounts under set performance standards. (Id. ¶ 24.) Natale contended that this failure was due to the changes in his territory, the disproportionate assignment of territory and the uneven assignment of departing employees’ accounts to other salespersons. (Id.) In the last year of his employment, Natale purportedly generated over one million dollars of company profit and \$200,000.00 in personal income. (Id. ¶ 25.) Mr. Gabriele and Mr. Carroll each made over one million dollars, with the bulk of their income

revenue coming from interim rent and missed notice accounts. (Id.)

Natale initiated this action in the Philadelphia County Court of Common Pleas in October of 2007. In November of 2007, it was removed to this Court on the basis of diversity of citizenship, 28 U.S.C. § 1332. The Complaint sets forth four grounds for relief: (1) breach of contract (Count I); (2) breach of the covenant of good faith and fair dealing (Count II); (3) violation of Pennsylvania's Fair Wage and Collection Law (Count III); and (4) wrongful discharge (Count IV). On January 9, 2008, Defendant Winthrop filed a Motion to Dismiss Counts I, II and IV of the Complaint, and to Strike paragraphs 18, 39(f) and 51(f) of the Complaint.

II. STANDARD OF REVIEW

The purpose of a Fed. R. Civ. P. 12(b)(6) motion is to test the legal sufficiency of a complaint. Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d Cir. 1993). Under Rule 12(b)(6), a defendant bears the burden of demonstrating that the plaintiff has not stated a claim upon which relief can be granted. FED. R. CIV. P. 12(b)(6); see also Hedges v. U.S., 404 F.3d 744, 750 (3d Cir. 2005). The question before the court is not whether the plaintiff will ultimately prevail. Hishon v. King & Spalding, 467 U.S. 69, 73, 104 S. Ct. 2229, 2232 (1984). Rather, the court should only grant a 12(b)(6) motion if “it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” Id. (citing Conley v. Gibson, 355 U.S. 41, 45-46, 78 S. Ct. 99, 102 (1957)). When considering such a motion to dismiss, the court must “accept as true allegations in the complaint and all reasonable inferences that can be drawn therefrom, and view them in the light most favorable to the nonmoving party.” Rocks v. City of Philadelphia, 868 F.2d 644, 645 (3d Cir. 1989). The court, however, will not accept unsupported conclusions, unwarranted inferences, or sweeping legal conclusions cast in the form of factual

allegations. Morse v. Lower Merion School Dist., 132 F.3d 902, 906 (3d Cir. 1997).

III. DISCUSSION

A. Motion to Dismiss the Breach of Contract Claim (Count I)

In the preliminary portion of its motion, Defendant seeks dismissal of Count I of Plaintiff's Complaint for breach of contract. Plaintiff's breach of contract claim encompasses two separate components. First, Plaintiff alleges that Defendant improperly terminated him without a clear cause in violation of the term nature of his employment. Second, he claims that by thwarting his success, Defendant breached the contractual engagement letter, which expressly indicated that the Company would "do everything possible to assist [Plaintiff] in [his] success." (Compl. ¶¶ 27-28.) As set forth below, the Court finds that neither of these allegations state a claim upon which relief may be granted.

1. Whether Plaintiff Was an At-Will Employee

"Absent an employment contract, the employment relationship is presumed to be at-will under Pennsylvania law." Frame v. Berkey Photo, Inc., Civ. A. No. 85-5832, 1987 WL 6885, at *1 (E.D. Pa. Feb. 19, 1987). Even where a contract is present, however, a court is not permitted to imply a term for a reasonable length where the parties to an employment contract do not specify the duration of the contract. Shriver v. Cichelli, Civ. A. No. 92-0094, 1992 WL 350226, at *3 (E.D. Pa. Nov. 19, 1992) (quoting Greene v. Oliver Realty, Inc., 526 A.2d 1192, 1195 (Pa. 1987)). In other words, a contract of employment that does not specify a definite duration of employment is presumed to be terminable at the will of either party. McWilliams v. AT&T Info. Sys., 728 F. Supp. 1186, 1194-95 (W.D. Pa. 1990). At-will employees may be discharged at any time, for any reason or for no reason. Stumpp v. Stroudsburg Mun. Auth., 658 A.2d 333, 335 (Pa. 1995).

In order for the presumption at-will to be overcome, the employee must present “clear evidence that the parties intended to contract for a definite period.” Violanti v. Emery Worldwide A-CF Co., 847 F. Supp. 1251, 1258-59 (M.D. Pa. 1994) (quoting Greene, 526 A.2d at 1200). “The employee who seeks to show that the parties intended to modify the presumed at-will relationship carries this heavy burden of proof.” Edelstein v. Cont’l Bldg. Supply, Inc., Civ. A. No. 90-8069, 1992 WL 210177, at *3 (E.D. Pa. Aug. 21, 1992). To meet this burden, the employee must establish either (a) an express contract between the parties setting a definite term or requiring termination only for cause; (b) an implied in-fact contract where all of the surrounding circumstances of the hiring indicate that the parties did not intend the employment to be at-will; or (c) an implied-in-fact contract plus additional consideration passing from the employee to the employer from which the court can infer the parties intended to overcome the at-will presumption. Veno v. Meredith, 515 A.2d 571, 577 (Pa. Super. 1986); Raines v. Haverford Coll., 849 F. Supp. 1009, 1012 (E.D. Pa. 1994) (citing Ruzicki v. Catholic Cemeteries, Inc., 610 A.2d 495, 497 (Pa. Super. 1992)). Although the question of intent is generally one for the jury, the court may decide if the resolution of the issue is so clear that reasonable minds simply could not differ. Markham v. Computone, Civ. A. No. 91-6433, 1992 WL 59154, at *6 (E.D. Pa. Mar. 19, 1992); Edelstein, 1992 WL 210177, at *3.

Plaintiff, in this case, attempts to avail himself of the three recognized methods of overcoming the at-will presumption. First, he alleges the existence of an express contract for a definite term. Second, he claims that there was an implied contract based on the circumstances of his hiring and employment indicating that the parties did not intend at-will employment. Finally, he asserts that he provided additional consideration to his employer to support the existence of

employment for term. The Court addresses each theory in turn.

a. Express Contract

First, Plaintiff contends that he was provided with an “engagement letter/contract,” dated January 29, 1999, which specified the terms and conditions of his employment, including the length of that employment, as follows:

Dear Jim:

We are extremely pleased that you are interested in joining Winthrop Resources Corporation’s Value Added Sales team. We are confident that you will make significant contributions to the growth of our Company and will enjoy the level of success you aspire to. I can assure you that we will do everything possible to assist you in that success.

The sales position offered will be based in Trevoise, Pennsylvania and will report to me. Following are the terms of our employment offer to you:

- 1) Responsibilities: Represent Winthrop in all Sales functions in the designated territory
- 2) Territory: Northeastern U.S. (Specific territory will be finalized prior to your Start Date)
- 3) Start Date: February 15, 1999
- 4) Non-recoverable Draw: A total of \$50,000 to be paid bi-weekly for the initial twelve (12) months of your employment.
- 5) Recoverable Draw: A draw of up to \$50,000 recoverable against earned commissions, to be paid bi-weekly. All draw thereafter will be recoverable and the amount will be determined at the end of your first year of employment.
- 6) Expenses: Travel and entertainment expenses are charged against your total gross margin. You will be reimbursed for mileage at \$.28 per mile for all business miles driven.
- 7) Commissions: Commissions will be paid at 25% of the gross margin generated for each transaction at the time the cash gross margin is received (and provided that you are then currently employed by the Company). After 2 years with the Company, you will need to meet the New Account Minimum Performance Objective (MPO) in order to remain at the 25% commission rate. Otherwise, you will be paid at 20% of gross margin. Transactions with a net loss will be debited against Gross Margin. Commissions are solely

based on cash received by the company.

8) Benefits: Winthrop/TCF Insurance and Benefits Plan (attached).

Jim, please review the terms of the offer and we can discuss any questions you may have. We all look forward to working with you.

(Compl. ¶¶ 26-34; Def. Mem. Supp. Mot. Dismiss, Ex. A.)

Giving plain meaning and construction to this document,¹ the Court declines to find that it sets forth a contract for a definitive length of employment. While this letter may arguably bind Defendant to the various terms delineated therein, nothing within those terms either references any set period of employment, suggests that the employment is terminable only for cause or offers any clear evidence that the parties intended to contract for a definite period. Such a contract of employment, under clear Pennsylvania law, is presumed to be at-will. McWilliams, 728 F. Supp. at 1194-95.

Plaintiff's arguments to the contrary fail to meet the heavy burden of overcoming this legal presumption. First, Plaintiff contends the term "at-will" was neither explained to him nor provided in writing. Pennsylvania law, however, emphasizes that "the employment-at-will doctrine applies absent a clear intent by the parties to the contrary." Raines, 849 F. Supp. at 1011. Under this presumption, it is unnecessary for an employer to specify that an offered employment is at-will or to explain to the employee the nature of employment at-will.

Second, Plaintiff avers that the letter's provision describing his salary in terms of recoverable and non-recoverable draw over a period of twelve months suggests that he was employed for an initial term of at least one year, which was renewed automatically each year. This

¹ "The intent of the parties is to be ascertained from the document itself when the terms are clear and unambiguous." Walton v. Philadelphia Nat. Bank, 545 A.2d 1383, 1388 (Pa. Super. 1988).

argument, however, disregards the fact that “[i]n nearly every employment relationship . . . the employer will articulate terms such as what the employee’s salary will be (whether computed annually, monthly, weekly or hourly), as well as other terms, conditions and benefits of the employment.” Woo v. Centocor, Inc., Civ. A. No. 95-3990, 1995 WL 672389, at *3 (E.D. Pa. Nov. 9, 1995) (quoting Volk v. Pribonic, Civ. A. No. 94-2165, 1995 WL 360186, at *2 (W.D. Pa. Apr. 11, 1995). “To hold that this is sufficient to create a contract for a definite term . . . would completely eviscerate the at-will presumption.” Id. As such, it is well-established that an offer letter or agreement setting forth a compensation scheme encompassing either an annual salary, year end bonus or other long-term incentive is insufficient, as a matter of law, to establish the existence of a contract of employment for a term of years. See Carlson v. Arnot-Ogden Mem. Hosp., 918 F.2d 411, 415 (3d Cir. 1990) (neither a clause specifying an annual salary or a clause incorporating hospital staff bylaws which provide for initial staff appointments of one year is sufficient, under Pennsylvania law, to remove the contract from employment at-will by creating an annual term of employment); Beidler v. W.R. Grace, Inc., 461 F. Supp. 1013, 1015 (E.D. Pa. 1978), aff’d, 609 F.2d 500 (3d Cir. 1979) (“Stating that an employee’s compensation is for a stated amount for a stated period does not make the contract one for a definite period, or even raise the presumption that the hiring was for such a period.”); Booth v. McDonnell Douglas Truck Servs., Inc., 585 A.2d 24, 27 (Pa. Super. 1991) (“Salary computed for a specific time period, such as annually, does not evidence an intent that the contract is for that period.”); Fetter v. Reading Energy Holding, No. 5060, 1991 WL 354880, at *2-4 (C.P. Phila. Jan. 8, 1991) (offer letter mentioning (a) year-end incentive bonus, which, if earned, would be based on set percentage of annual salary; (b) pension plan; and (c) long-term stock incentives was insufficient, as a matter of law, to establish the existence of a contract of

employment for a term of years).

Interpreted for its plain meaning and expression of the parties' intent, the offer letter at issue contains no definite term which this Court can enforce. We thus decline to find the presumption of employment at-will overcome by an express agreement.

b. Implied-in-Fact Contract

Plaintiff alternatively argues that he had an implied-in-fact contract for a definite term, created by the surrounding circumstances of his hiring and employment. Absent an express written provision indicating that employment is for a definite term or is not at-will, an employee may show that "the circumstances of the hiring amount to an implied contract to hire for a definite time." Shriver v. Cichelli, Civ. A. No. 92-0094, 1992 WL 350226, at *3 (E.D. Pa. Nov. 19, 1992). "This is a heavy burden which requires a showing of a 'clear statement of an intent to modify.'" Sharp v. BW/IP Intern., Inc., 991 F. Supp. 451, 459 (E.D. Pa. 1998) (quoting DiBonaventura v. Consol. Rail Corp., 539 A.2d 865, 868 (Pa. Super. 1988)). Both definiteness and clarity are required and the employee must show that both parties intended to make a contract. Id. Whether the plaintiff has produced sufficient evidence to overcome the at-will presumption is a question of interpretation normally left to the court. Schoch v. First Fid. Bancorp., 912 F.2d 654, 660 (3d Cir. 1990); see also Violanti v. Emery Worldwide A-CF Co., 847 F. Supp. 1251, 1259 (M.D. Pa. 1994) (granting motion to dismiss breach of contract claim where employee failed to alleged facts sufficient to overcome the presumption of at-will employment).

The Court finds no merit to Plaintiff's implied contract theory. First, and perhaps most importantly, neither the Complaint nor Plaintiff's Opposition to Defendant's Motion to Dismiss suggest that Plaintiff was orally offered a definite term of employment or that the parties verbally

agreed that he would not be an at-will employee. Given these undisputed facts, the Court now has no discretion to simply imply a term or infer an intent to modify the presumption.

Moreover, the facts raised in opposition to the Motion to Dismiss are legally insufficient to rebut the presumption. Plaintiff first claims that he was placed on probation, clearly indicating that the employment was for a definitive term and subject to performance standards, which, if met, guaranteed a continued term of employment. The mere fact that an employee is placed on or successfully completes a term of probation, however, does not, standing alone, convert an at-will employment into an employment for a term. Indeed, contrary to Plaintiff's contention, a probationary period prior to termination may simply reflect an employer's altruistic efforts to remediate an employee's performance. Such efforts are entirely consistent with employment at-will. See generally Scott v. Extracorporeal, Inc., 545 A.2d 334, 336-37 (Pa. Super. 1988) (statement in employee handbook that employment status would be permanent upon successful completion of probation did not suggest permanent employee could never be fired except for cause); Kelly v. Retirement Pension Plan for Certain Home Office, Managerial and Other Employees of Provident Mut., 209 F. Supp. 2d 462, 480 (E.D. Pa. 2002) (finding that probationary letter does not overcome express at-will employment contract); Maxfield v. North Am. Phillips Consumer Elecs. Corp., 724 F. Supp. 840, 845 (D. Utah 1989) (employer, by placing employee on disciplinary probation for certain period, did not alter its at-will employment contract to one for a certain term during which employee could be fired only for cause). Certainly, the Court cannot rely on the simple use of such a ubiquitous business practice to infer that the employment relationship at issue was not at-will.

Lastly, Plaintiff asserts that (a) he was assured that "he would be employed as a sales associate with Defendant provided only that he meet certain minimum performance objectives that

were published, distributed and revised by Defendant throughout his employment,” and (b) Defendant’s business model anticipated that sales associates would be employed for a term of at least two years. (Pl. Mem. Supp. Opp. Mot. Dismiss 3, 6.) It is again legally settled, however, that “[e]vidence of a subjective expectation of a guaranteed employment period, based on employer practices or vague employer superlatives, is insufficient.” Scully v. US WATS, Inc., 238 F.3d 497, 505 (3d Cir. 2001). Courts applying Pennsylvania law have consistently declined to enforce such vague and indefinite assurances. See, e.g., Preobrazhenskaya v. Mercy Hall Infirmmary, Civ. A. No. 01-1258, 2002 WL 32396244, at *4 (W.D. Pa. Jul. 12, 2002) (“[A]n employer’s representation to an employee that he or she would not be terminated as long as his or her work was performed satisfactorily or a promise of ‘permanent’ employment is insufficient to create an enforceable obligation on the part of an employer.”); Braun v. Kelsey-Hayes Co., 635 F. Supp. 75, 77 (E.D. Pa. 1986) (holding that allegation that employment relationship would continue as long as services were satisfactory was insufficient as a matter of law to overcome the at-will presumption); Donahue v. Custom Mgmt. Corp., 634 F. Supp. 1190, 1200 (E.D. Pa. 1986) (holding that offer of employment for “so long as” employee performed satisfactorily or met certain standards “does not provide any specific guidelines for determining the duration of the alleged contract and is therefore too ambiguous to overcome the presumption that the employment relationship was terminable at-will.”); Darlington v. Gen. Elec., 504 A.2d 306 (Pa. Super. 1986) (employer’s statement that employee was hired to work on a “long range project” held too vague and unspecified to overcome the at-will presumption), overruled on other grounds, Clay v. Advanced Computer Applications, 559 A.2d 917 (Pa. 1989); Betts v. Stroehmann Bros., 512 A.2d 1280, 1281 (Pa. Super. 1986) (“An intention to offer a specific tenure of employment is not inferable from an employer’s statement, verbal or

written, that employees would not be terminated so long as they performed their work in a satisfactory manner.”). In light of the fact that Plaintiff has alleged no facts which show a clear intent to modify the at-will presumption, the Court must likewise reject this theory.²

c. Implied Contract Based on Additional Consideration

In a last ditch effort to preserve his breach of contract claim, Plaintiff now asserts, for the first time, that he has provided sufficient additional consideration to Defendant to create an implied-in-fact contract for term employment. As noted above, the presumption of at-will employment may be overcome by a showing that the employee provided additional consideration to the employer and that termination of employment would result in great hardship or loss to the party known to both employer and employee when the contract was made. Permenter v. Crown Cork & Seal Co., Inc., 38 F. Supp.2d 372, 379 (E.D. Pa. 1999), aff’d, 210 F.3d 358 (3d Cir. 2000). “When sufficient additional consideration is present, an employee should not be subject to discharge without just cause for a reasonable time.” Veno v. Meredith, 515 A.2d 571, 580 (Pa. Super. 1986).³ Types of

² Notably, Plaintiff was actually employed by Defendant for seven years. So even to the extent that the sales associate performance standards, business model and compensation scheme mandated a term of at least one or two years for a salesperson to be successful, that term had long expired at the time Plaintiff was terminated.

Plaintiff relies heavily on the case of Janis v. AMP, Inc., 856 A.2d 140 (Pa. Super. 2004), for the proposition that “[w]here a contract of employment for a definite time is made and the employee’s services are continued, after the expiration of the time, without objection, the inference is that the parties have assented to another contract for a term of the same length with the same salary and conditions of service, following the analogy of a similar rule in regard to leases.” Id. at 147-48 (quotations omitted). Under this principle, however, Plaintiff would have had to have been employed under a original contract for a definite term. As he had no definite term of employment upon being hired, there could be no automatic renewal of the term of duration.

³ “The length of time during which it would be unreasonable to terminate, without just cause, an employee who has given additional consideration should be commensurate with the hardship the employee has endured or the benefit he has bestowed.” Veno, 515 A.2d at 580.

consideration including relocation of an employee, particularly when accompanied by relocation of a family, abandonment of other job opportunities or sale of a home. Permenter, 38 F. Supp.2d at 379. Although the determination of whether there is sufficient consideration to overcome the at-will presumption is typically a question for a jury, the court may rule on the issue when reasonable minds could not differ on the outcome. Id.

Guided by these principles, the Court must reject Plaintiff's argument. Plaintiff's brief in opposition to the motion baldly asserts that he "will testify in discovery concerning the circumstances of his employment, including what he gave up in consideration for obtaining employment with Defendant." (Pl. Mem. Supp. Opp. Mot. Dismiss 13.) At no point in the Complaint, however, does Plaintiff ever explicitly allege an implied in-fact contract, plus additional consideration passing from the employee to the employer from which the court could infer the parties intended to overcome the at-will presumption. Moreover, none of the underlying facts pled in the Complaint suggest that Plaintiff either furnished Defendant with "a substantial benefit" or underwent a "substantial hardship" other than the services which he was hired to perform.

Buckwalter v. ICI Explosives USA, Inc., Civ. A. No. 96-4795, 1998 WL 54355, at *8 (E.D. Pa. Jan. 8, 1998) (quoting Scott v. Extracorporeal, Inc., 545 A.2d 334, 339 (Pa. Super. 1988)). Even in the face of the present motion to dismiss, Plaintiff fails to hint at what type of additional consideration he gave for obtaining term employment. "While a plaintiff may rely on the court to draw all reasonable inferences in his favor at the Rule 12(b)(6) stage, a plaintiff who relies on the court to fill in the blanks for all of the information missing in his complaint does so at his peril." Chemtech Intern., Inc. v. Chem. Injection Techs., 170 Fed. Appx. 805, 808 (3d Cir. 2006). Accordingly, the Court concludes that no reasonable juror could find the presence of additional consideration to

support an implied-in-fact contract for a term of employment. Martin v. Safeguard Scientifics, Inc., 17 F. Supp. 2d 357, 369 (E.D. Pa. 1998) (court may answer questions of fact regarding presence of additional consideration where the outcome is clear).

In short, taking all of the allegations and reasonable inferences from the Complaint as true, Plaintiff has failed to plead the existence of either an express or implied contract sufficient to rebut the presumption of employment at-will. The contract contains no definitive term. Moreover, none of the facts alleged by Plaintiff legally suffice to defeat the at-will presumption. While the Court, as a matter of course, remains wary of dismissing causes of action at such an early stage, Plaintiff's breach of contract claim for termination simply has no legal foundation on which he can recover.

2. Whether Defendant's Assurance that It "will do everything possible to assist" Plaintiff Should Be Given Legal Effect

The second aspect of Plaintiff's breach of contract claim alleges that Defendant was contractually bound by the statement in the offer letter that the Company "can assure you that we will do everything possible to assist you in that success." (Def. Mem. Supp. Mot. Dismiss, Ex. A.) Again, these allegations fail to state a claim upon which relief can be granted.

"Under Pennsylvania law, an agreement is enforceable only if both parties manifest an intent to be bound by its terms, the terms are sufficiently definite to be specifically enforced, and the agreement is supported by consideration." Engstrom v. John Nuveen & Co., Inc., 668 F. Supp. 953, 962 (E.D. Pa. 1987) (citing Channel Home Ctrs, Grace Retail v. Grossman, 795 F.2d 291, 298-99 (3d Cir. 1986)). Whether terms are sufficiently definite to be enforced is a question of law. Id. "If the essential terms are so uncertain that there is no basis for determining whether the agreement has been kept or broken, there is not an enforceable contract." Linnet v. Hitchcock, 471 A.2d 537, 540 (Pa. Super. 1984) (citations omitted).

In the employment context, promises of “excellent treatment” in salaries, bonuses and promotions have not been deemed sufficiently definite. Engstrom, 668 F. Supp. at 962. Likewise, promises that an employee would receive “more” or “adequate” assistance in conducting her management duties for the defendant employer has been found far too indefinite to constitute a binding contract. Euerle-Wehle v. United Parcel Serv., Inc., 181 F.3d 898, 901 (8th Cir. 1999); see also Zukoski v. Baltimore & Ohio R.R. Co., 315 F.2d 622, 624-25 (3d Cir. 1963) (defendant employer’s promise that if plaintiff signed a release, defendant would give him “such employment as would be suitable to his [injured] condition” was unenforceable because it was so vague and indefinite that nothing certain about it could be formulated); Albanese v. WCI Cmtys., Inc., 530 F. Supp.2d 752, 763-64 (E.D. Va. 2007) (employer’s oral statements and representation in offer letter, which promised employee “comparable employment back in Florida” if “things did not work out for one reason or the other” at Washington, D.C., job location, were too vague to form binding contract).

In this case, Defendant’s alleged promise to “do everything possible to assist [Plaintiff]” in obtaining “the level of success [he] aspire[s] to” clearly cannot be construed as a binding obligation. First, the placement of the alleged promise in the offer letter reveals that it was not intended as a binding covenant. The statement was made in the offer letter’s opening paragraph, in which Defendant’s employee Frank Gabriele offered greetings and expressed his pleasure in Plaintiff’s interest in joining the company. (Def. Mem. Supp. Mot. Dismiss, Ex. A.) The subsequent paragraph then states that “[t]he sales position offered will be based in Trevoise, Pennsylvania and will report to me. Following are the terms of our employment offer to you: . . .” (Id.) Immediately thereafter, the letter lists various agreed upon terms such as salary, start date, benefits and sales

territory. (*Id.*) Read logically, the structure of the letter suggests that the promise to assist Plaintiff did not fall within the offered “terms of employment.”

Moreover, even assuming the alleged promise was included as part of the terms, it is far too vague and indefinite to form a binding contract. The uncertainty of the promise creates no basis on which the court could determine whether the agreement has been kept or broken. Indeed, as noted by the Defendant, a broad interpretation of such an alleged covenant could hold Defendant liable for not aiding Plaintiff in every conceivable manner, even to the detriment of other employees. Absent some objective standard on which the Court could enforce this provision, we decline to give this statement any legally binding effect.⁴

B. Motion to Dismiss Claim for Breach of the Covenant of Good Faith and Fair Dealing

Count II of the Complaint alleges that Defendant breached the covenant of good faith and fair dealing by reassigning the accounts of departing salespersons to other individuals, permitting other employees to solicit business in his territory, placing him on probation without cause, reassigning his territory, preventing inside sales representatives from making calls on his behalf, making disparaging remarks about him to other employees and terminating him for not adhering to the company’s “less than forthright sales model.” (Compl. ¶¶ 39-40.) Defendant now responds that, in light of the existing at-will employment relationship, Plaintiff cannot maintain an action for breach of the implied duty of good faith and fair dealing.

“In Pennsylvania, a covenant of good faith and fair dealing is implied in every contract.”
Temple Univ. Hosp., Inc. v. Group Health, Inc., Civ. A. No. 05-102, 2006 WL 146426, at *6 (E.D.

⁴ As discussed *infra*, the Court’s finding as to the legal implications of this statement has no bearing on whether Defendant was bound by a covenant of good faith and fair dealing.

Pa. Jan. 12, 2006) (quoting Lyon Fin. Servs. v. Woodlake Imaging, LLC, Civ. A. No. 04-3334, 2005 WL 331695, at *8 (E.D. Pa. Feb. 9, 2005)). Courts use this good faith duty as “an interpretive tool to determine the parties’ justifiable expectations in the context of a breach of contract action.” Northview Motors, Inc. v. Chrysler Motors Corp., 227 F.3d 78, 91 (3d Cir. 2000). There is no claim under Pennsylvania law, however, for a breach of duty of good faith and fair dealing where the claimed breach concerns an employee’s termination and the employment relationship is at-will. Brachvogel v. Beverly Enters., Inc., 173 F. Supp. 2d 329, 333 (E.D. Pa. 2001). As explained by the Third Circuit, a claim for breach of an implied covenant of good faith in an at-will employment contract fails “since it would be to no avail to plaintiff to claim breach of an express contract of employment which would have been terminable immediately thereafter at the option of the employer.” Bruffett v. Warner Communications, Inc., 692 F.2d 910, 913 (3d Cir. 1982).

Notwithstanding this principle, it is likewise clear that “the duty to perform contractual obligations in good faith does not evaporate merely because the contract is an employment contract, and the employee has been held to be an employee at will.” Somers v. Somers, 613 A.2d 1211, 1213 (Pa. Super. 1992). “[I]n an at-will employment relationship, the duty of good faith and fair dealing applies to those contractual terms that exist beyond the at-will employment relationship.” Donahue v. Federal Exp. Corp., 753 A.2d 238, 242 (Pa. Super. 2000). Accordingly, even absent an express provision setting forth a duty of good faith and fair dealing, the covenant

will imply an agreement by the parties to a contract to do and perform those things that according to reason and justice they should do in order to carry out the purpose for which the contract was made and to refrain from doing anything that would destroy or injure the other party’s right to receive the fruits of the contract.

Somers, 613 A.2d at 1214 (quoting Frickert v. Deiter Bros. Fuel Co., Inc., 347 A.2d 701 (Pa. 1975)). In short, even an at-will employee may bring a cause of action for breach of the covenant of

good faith and fair dealing where the employer acted in bad faith with respect to terms of the employment contract other than those concerning termination. See, e.g., Sarbiewski-Keltner v. Fed. Exp. Corp., Civ. A. No. 95-4718, 1997 WL 11297, at *15 (E.D. Pa. Jan. 10, 1997) (declining to grant motion for summary judgment on claim of breach of covenant of good faith and fair dealing by at-will employee).

In the case at bar, Plaintiff alleges breach of the covenant of good faith and fair dealing, with resulting damages of lost income, due to his termination. As an employee at-will, such a claim is unequivocally barred under Pennsylvania law.

Plaintiff, however, also alleges that he had a contract, memorialized by the offer letter, to be Defendant's sales representative in an exclusive territory, and to have the opportunity to earn certain sales commissions in that territory. He goes on to argue that Defendant breached the covenant of good faith and fair dealing, implied in that contract, by repeatedly interfering with his employment duties, resulting in the loss of substantial commissions from missed business opportunities. (Compl. ¶ 41.) Taking such assertions as true, the fact that Plaintiff is an at-will employee does not eviscerate either the alleged binding nature of those terms or the applicability of the covenant of good faith and fair dealing.⁵ Given that Plaintiff has alleged the existence of a contract and the

⁵ Defendant argues that Plaintiff's status as an employee at-will left him with no contractual right. In support, it cites Milliner v. Enck, Civ. A. No. 98-467, 1998 WL 303725, at (E.D. Pa. May 7, 1998), for the proposition that the right to terminate at-will necessarily encompasses the right to alter compensation or change work assignments. Id. at *3. In that case, however, the plaintiff failed to produce evidence of either a written or oral contract setting forth the terms he claimed were breached. Id.

To the contrary, Plaintiff, in this case, has produced a written document that, on further factual development, may be deemed a legally binding contract setting forth various terms of employment. The mere fact that this Court determined that Plaintiff was an at-will employee is irrelevant to whether a contract existed regarding compensation and other employment terms. Sullivan v. Chartwell Inv. Partners, LP, 873 A.2d 710, 716 (Pa. Super. 2005).

breach of those terms under the implied covenant, for which he has suffered damages during the course of his employment, the Court declines to dismiss this portion of the cause of action.⁶

C. Motion to Dismiss the Wrongful Discharge Claim (Count IV)

In the final count of his Complaint, Plaintiff alleges that he was wrongfully discharged from his employment, in violation of the public policy of the Commonwealth of Pennsylvania.

Defendant now seeks to dismiss that Count, alleging that Plaintiff has no cause of action as an at-will employee.

As a general rule, there is no common law cause of action against an employer for termination of an at-will employment relationship. Rutherford v. Presbyterian Univ. Hosp., 612 A.2d 500, 505 (Pa. Super. 1992). An exception to this rule exists where an employee is terminated for reasons that violate public policy. Pyles v. City of Philadelphia, Civ. A. No. 05-1769, 2006 WL 3613797, at *7 (E.D. Pa. Dec. 8, 2006). This exception is limited to situations “where (1) an employer requires an employee to commit a crime, (2) an employer prevents an employee from complying with a statutory duty, or (3) the discharge of the employee is specifically prohibited by statute.” Id. The Pennsylvania Supreme Court has emphasized that this exception, however, is a narrow one: “an employee will be entitled to bring a cause of action for termination of that relationship only in the most limited of circumstances where the termination implicates a clear mandate of public policy in this Commonwealth.” McLaughlin v. Gastrointestinal Specialists, 750 A.2d 283, 287 (Pa. 2000). The judiciary may not create or form public policy with respect to

⁶ Under Pennsylvania law, a claim for breach of the covenant of good faith and fair dealing cannot be maintained independently, but rather must be included in the breach of contract action. Northview Motors, 227 F.3d at 91-92. Therefore, the cause of action based on this covenant must be subsumed into the underlying breach of contract action.

wrongful discharge; rather, in order to find a cause of action for wrongful discharge in the context of at-will employment, “the discharge must threaten or violate a clear mandate of public policy.”

Krajsa v. Keypunch, Inc., 622 A.2d 355, 359 (Pa. Super. 1993).

The Third Circuit clarified that “the Pennsylvania public policy exception is limited solely to when the employee objects to a course of action that the employer is taking that is clearly illegal.”

Kelly v. Retirement Pension Plan for Certain Home Office, Managerial and Other Employees of Provident Mut., 73 Fed. Appx. 543, 544-45 (3d Cir. 2003); see also Woodson v. AMF Leisureland Ctrs., Inc., 842 F.2d 699, 701-02 (3d Cir. 1988) (finding violation of public policy “when the discharge is a result of the employee’s compliance with or refusal to violate the law.”).

“Pennsylvania will not recognize a wrongful discharge claim when an at-will employee’s discharge is based on a disagreement with management about the legality of a proposed course of action unless the action the employer wants to take actually violates the law.” Clark v. Modern Group Ltd., 9 F.3d 321, 328 (3d Cir. 1993). The employee must identify a “‘specific’ expression of public policy violated by his discharge.” McGonagle v. Union Fid. Corp., 556 A.2d 878, 885 (Pa. Super. 1989). Otherwise, “[t]he creation of a cause of action based on an employee’s reasonable belief about the law would leave a private employer free to act only at the sufferance of its employees whenever reasonable men or women can differ about the meaning or application of a law governing the action the employer proposes.” Clark, 9 F.3d at 332. Moreover, “[t]he employee’s good intentions are not enough to create a cause of action for wrongful discharge If an employee can avoid discipline whenever he reasonably believes his employer is acting unlawfully, it is the employee, not the public, who is protected by the good intentions.” Id.

Generally, application of Pennsylvania law has led courts to disallow a wrongful discharge

claim, brought under the public policy exception, where the employee objected to or refused to participate in a practice that, while perhaps unscrupulous or questionable, was not a violation of a clear public policy mandate. See, e.g., Smith v. Calgon Carbon Corp., 917 F.2d 1338, 1345-46 (3d Cir. 1990) (an employee who was charged with maintaining a company's inventory of toxic materials had no cause of action when discharged for reporting a possible leak of caustic soda, after supervisors instructed him not to report the leak); Brown v. Hammond, 810 F. Supp. 644, 647 (E.D. Pa. 1993) (“[P]laintiff’s termination for gratuitously alerting others about defendants’ improper billing practice does not violate the type of significant, clearly mandated public policy required to satisfy the very narrow exception to Pennsylvania’s rigid at will employment doctrine.”); Plemmons v. Pennsylvania Mfrs. Ass’n Ins. Co., Civ. A. No. 90-2495, 1991 WL 125982, at *9-10 (E.D. Pa. Jul. 3, 1991) (dismissing wrongful discharge claim where employee was terminated for opposing the company’s practice of reducing reserves below the amount mandated by the Pennsylvania Unfair Insurance Practices Act, where the employee could not show that he was charged either by the law or the company with ensuring the adequacy of the reserves); Callahan v. Scott Paper Co., 541 F. Supp. 550, 563 (E.D. Pa. 1982) (finding that employer’s interest is paramount where the employee objects to pricing decisions of his employer on the ground that they cause harm to competition); Geary v. U.S. Steel Corp., 319 A.2d 174, 183-85 (Pa. 1974) (the discharge of an employee for complaining about allegedly defective products to management did not state a cognizable claim under Pennsylvania law); McGonagle, 556 A.2d at 885 (discharge of general counsel of insurance company for his refusal to approve mailings which he believed violated other states’ unspecified insurance laws was not violative of public policy and thus did not support action for wrongful

termination of at-will employee).⁷

In the case at bar, Plaintiff's cause of action fails to rise to the level of a public policy violation, as defined under Pennsylvania law. The pertinent allegations of the Complaint state as follows:

- Defendant's termination of Plaintiff Natale was in violation of the public policy of the Commonwealth of Pennsylvania which mandates that persons employed in sales utilize "good faith and fair dealing" when conducting their business affairs with consumers (Compl. ¶ 49.)
- Plaintiff was wrongfully discharged because he did not support the Defendant's corporate culture that derived millions of dollars in income from naive clients, i.e. per the Defendant's management, Mr. Natale was "too nice." (Id. ¶ 52.)
- Plaintiff was discharged because he openly questioned the ethics of Defendant's business model (holding customers, like Saflio Corporation, to business terms which Defendant's customers did not understand and which led to substantial profit windfalls to the Company and unforeseen obligations to the customers). (Id. ¶ 53.)
- Plaintiff was wrongfully discharged because he did not want his clients tricked by "interim rent" and "missed notice" provisions. (Id. ¶ 54.)

Such allegations do not suggest either that (1) Defendant required Plaintiff to commit a crime; (2)

⁷ The cases that have allowed a claim to proceed under this exception have identified a particular policy or law violated by the employer's actions. See, e.g., Dugan v. Bell Tel. of Pennsylvania, 876 F. Supp. 713, 725 (W.D. Pa. 1990) (denying motion to dismiss where plaintiff employee alleged that defendants asked plaintiff to participate in destroying records that were subpoenaed by the Pennsylvania state legislature as part of an official investigation – an act that was unlawful under several Pennsylvania statutes); McNulty v. Borden, Inc., 474 F. Supp. 1111, 1120 (E.D. Pa. 1979) (where employee alleged that he was discharged because he refused to commit a crime or participate in an illegal pricing scheme under antitrust laws, the court held that these allegations, if proven, would state a cause of action; cause of action later dismissed); Field v. Philadelphia Elec. Co., 565 A.2d 1170, 1180-82 (Pa. Super. 1989) (employee, hired as an expert in nuclear safety, could not be discharged for making statutorily required report to the Nuclear Regulatory Commission); Reuther v. Fowler & Williams, Inc., 386 A.2d 119, 120-22 (Pa. Super. 1978) (interference with at-will employee's duty to serve on jury, a duty expressly protected by statute, violates public policy).

Defendant prevented Plaintiff from complying with a statutory duty; or (3) Plaintiff's discharge was specifically prohibited by statute. Pyles, 2006 WL 3613797, at *7 (limiting public policy exception to these three categories). While Plaintiff may be commended for refusing to engage in allegedly unethical or unprofessional business activities, unethical does not equate with illegal. Moreover, Plaintiff's reliance on the alleged general policy of good faith and fair dealing is far too amorphous to act as the clear and specific expression of public policy required for a finding that Defendant's activity was illegal. Indeed, "[n]o state or federal court applying Pennsylvania law has yet upheld an action for wrongful discharge based on what an at-will employee thought was right." Clark, 9 F.3d at 330. Given that Plaintiff has cited to no actual violation of law, Plaintiff's Complaint, read as true and with all its reasonable inferences, does not suggest any clear violation of public policy sufficient to create an exception to the at-will employment doctrine. As such, the Court dismisses this Count.⁸

D. Motion to Strike

In the last portion of its motion, Defendant requests that the Court strike paragraphs 18, 39(f), and 51(f) of the Complaint, which state:

During his employment, Plaintiff Natale learned that Winthrop management had disparaged Natale's reputation. (Compl. ¶ 18.)

Defendant has engaged in bad faith in the following respects: . . . making disparaging remarks about Natale to Winthrop employees and executives. (Id. ¶ 39(f).)

⁸ Although Plaintiff also alleges that Defendant's termination of his employment arose from its specific intent to injure him and thwart his success, (Compl. ¶ 50), federal cases interpreting Pennsylvania law have found that an allegation of specific intent to harm does not except a wrongful discharge claim from the at-will presumption. McLaughlin v. Kvaerner ASA, Civ. A. No. 04-5559, 2006 WL 2129124, at *4 (E.D. Pa. 2006); Pyles, 2006 WL 3613797, at *10.

More specifically, Defendant manifested its intent to injure Natale in the following respects: . . . making disparaging remarks about Natale to Winthrop employees and executives. (Id. ¶ 51(f)).

Defendant now alleges that Plaintiff has “gratuitously accused unnamed non-parties of disparaging his reputation,” and that such statements are inflammatory, irrelevant and will require unnecessary time and resources in discovery. (Def. Mem. Supp. Mot. Dismiss 9.)

Rule 12(f) of the Federal Rules of Civil Procedure provides that “the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.” FED. R. CIV. P. 12(f). “The purpose of a motion to strike is to clean up the pleadings, streamline litigation, and avoid unnecessary forays into immaterial matters.” McInerney v. Moyer Lumber and Hardware, Inc., 244 F. Supp. 2d 393, 402 (E.D. Pa. 2002). Although “[a] court possesses considerable discretion in disposing of a motion to strike under Rule 12(f),” such motions are “not favored and usually will be denied unless the allegations have no possible relation to the controversy and may cause prejudice to one of the parties, or if the allegations confuse the issues in the case.” River Road Devel. Corp. v. Carlson Corp., Civ. A. No. 89-7037, 1990 WL 69085, at *2 (E.D. Pa. May 23, 1990). Thus, striking a pleading or a portion of a pleading “is a drastic remedy to be resorted to only when required for the purposes of justice.” DeLa Cruz v. Piccari Press, 52 F. Supp. 2d 424, 428 (E.D. Pa. 2007) (quotations omitted).

At first blush, the Court does not find the challenged allegations to be either completely irrelevant to the controversy or particularly impertinent or scandalous. On the merits, the Court is not particularly inclined to grant the motion. Nonetheless, Plaintiff has presented no responsive argument whatsoever, suggesting that it has no opposition to this request. Accordingly, the Court grants the motion and strikes paragraphs 18, 39(f) and 51(f).

IV. CONCLUSION

In light of the foregoing discussion, the Court will grant the motion to dismiss Plaintiff's breach of contract claim to the extent it alleges either improper termination or breach of the provision to "do everything possible" to assist Plaintiff, but not to the extent it asserts a breach of the covenant of good faith and fair dealing. Additionally, the Court will dismiss Plaintiff's claim for wrongful discharge and strike paragraphs 18, 39(f) and 51(f) of the Complaint. An appropriate order follows.

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

JAMES M. NATALE,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
WINTHROP RESOURCES	:	NO. 07-4686
CORPORATION,	:	
	:	
Defendant.	:	

ORDER

AND NOW this 9th day of *July*, 2008, upon consideration of Defendant Winthrop Resources Corporation's Motion to Dismiss Counts I, II and IV of Plaintiff's Complaint and Motion to Strike (Doc. No. 5), Plaintiff James M. Natale's Response thereto (Doc. No. 8) and Defendant's Reply Brief (Doc. No. 10), it is hereby **ORDERED** that the Motion is **GRANTED IN PART** and **DENIED IN PART**, as follows:

1. Defendant's Motion to Dismiss Count I is **GRANTED**;
2. Defendant's Motion to Dismiss Count II is **GRANTED** to the extent Plaintiff seeks damages for termination, but **DENIED** to the extent that Plaintiff seeks damages for loss of commissions from missed business opportunities. This Count shall be restructured as a breach of contract claim;
3. Defendant's Motion to Dismiss Count IV is **GRANTED**; and
4. Defendant's Motion to Strike Paragraphs 18, 39(f) and 51(f) is **GRANTED**.

BY THE COURT:

s/ Ronald L. Buckwalter
RONALD L. BUCKWALTER, S.J.