

VERDICTS & SETTLEMENTS

Fired VP: cash-strapped co. withheld commission

\$1.02 million settlement

The plaintiff was vice president of corporate development at a high-tech company for which he had worked for nine years.

The company began experiencing financial difficulties beginning in 2008, at which time it instituted salary reductions and deferred payment of certain compensation, which it called “bonuses” but which the complainant alleged were actually “commissions.”

The company put in place a written earn-back plan, which in an early draft was called a “deferred base compensation plan,” but in its final iteration was renamed as a “retention bonus plan.”

The plaintiff was terminated in 2012, just weeks after he allegedly had complained again about his withheld compensation and had been correspondingly threatened with termination. He also alleged that the company terminated him in an attempt to avoid paying him the six-figure commission he had earned for successfully managing the arbitration of a large legal dispute for the company.

The company cited “cash constraints” as the reason for the termination, but was in the process of restoring all salaries at the time.

At the time that he was let go, the company



Christopher R. O'Hara



Carole C. Cooke

acknowledged owing the employee only a portion of what he understood he was owed. The company offered to pay him over time rather than a lump sum and demanded a unilateral general release.

In its proposed termination agreement, the company made its offered payment contingent on factors within its own control, even though the work necessary to earn the commission was concluded prior to his termination.

Following the plaintiff's filing of a demand for arbitration against the company and three officers, the company paid him a total of \$266,519, but denied owing any more. The company defended on the grounds that any amounts owed to the worker were “discretionary bonuses,” not “wages” or “commis-

sions,” and hence they were not owed under the contract and could not be the basis for a claim of violation of the Wage Act.

The plaintiff argued that all amounts outstanding at his termination were wages or commissions, and that his claims under the Wage Act for unpaid compensation and retaliation entitled him to mandatory treble damages and mandatory attorneys' fees.

The parties settled several days before the arbitration hearing was scheduled to begin. The company agreed to pay \$750,000 in addition to the \$266,519 the company had already paid after the arbitration demand was filed, resulting in a recovery of over \$1 million.

Action: Employment

Injuries alleged: Owed compensation

Case name: Withheld

Court/case no.: Withheld

Jury and/or judge: N/A (settled)

Amount: \$1.02 million

Date: June 28, 2013

Attorneys: Christopher R. O'Hara and Carole C. Cooke, of Todd & Weld, Boston (for the plaintiff)



Todd & Weld LLP

www.toddweld.com