

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Citizens Bank NA

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages/commissions

Employer: Kathleen C. Peterson, Esq, Inhouse Counsel, Citizens Bank NA, 100
Sockanosset Cross Rd, Cranston, RI 02920

Date of Hearing: November 16, 2015

Case No.: 50742

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$27,000.00 in unpaid wages/commissions earned for March and April 2015. Specifically, he seeks an \$18,500 commission for a life insurance policy placed with Lincoln Financial, as well as additional commissions and residual payments. He alleges he repeatedly asked for copies of his commissions due for March and April 2015, which he argues the employer did not provide.

The claimant argues he never reviewed the 2015 compensation plan, though he agrees he did send an email to his boss on stating he had received and read the policy. He argues he only sent that email at the request of his manager.

The employer offered a check for the claimant in the amount of \$2,852.72 to settle the claim. The claimant declined the offer. The Department returned the check to the employer at the hearing.

The employer denies the claimant is due any commissions. The 2015 compensation agreement provides that exclusive remedy for any disputes or controversies is arbitration with the Financial Industry Regulatory Association or the American Arbitration Association, documentation previously submitted. Further, under the written plan of the employer, the claimant is not due commission for March 2015 forward as he did not complete the calendar month of April 2015. Even if he had been eligible for the commissions, his commission for the life insurance policy with Lincoln Financial would have been \$5,435.10, not \$18,500.

FINDINGS OF FACT

The claimant worked for the employer from January 2013 through April 21, 2015, when the employer terminated his employment.

The claimant recalled receiving a compensation plan for 2013. He did not recall receiving a compensation plan for 2014. He agreed he received an email with the 2015 compensation plan. He acknowledges he did not read the plan, though he sent an acknowledgment via email on Thursday, February 12, 2015 at 3:33pm with a subject line of "I acknowledge that I received and read the 2015 CCOISC Compensation Plan and Grid Addendum: URGENT: IMPORTANT REMINDER: 2015 CCOISC Sales Compensation Plan and Grid Addendum." He also noted he sent that email at the request of his supervisor or face disciplinary action. He agreed he never took an opportunity to review the plan, but he did have access to the plan documentation.

The compensation plan notified the claimant of the provision that his *exclusive remedy* for any disputes or controversies arising out of or in connection with his employment is arbitration with the Financial Industry Regulatory Association or the American Arbitration Association, documentation previously submitted.

The employment agreement also notified the claimant the terms regarding the eligibility for incentives, "In any calculation, the incentive is not deemed earned until the end of the calendar month."

DISCUSSION

The claimant's argument that he did not review the compensation plan is not persuasive. The employer provided a copy of the plan to the claimant. He had every opportunity to review the documentation. That he chose not to review the information is not the fault or issue of the employer. He worked under the parameters of the plan, which by agreement of both parties, was not substantially different from those of 2013 and 2014.

CONCLUSIONS OF LAW

RSA 275:50 and 275:51 V afford a claimant specific rights and privileges when he believes unpaid wages are due. 9USC2, the Federal Arbitration Act (FAA), which Circuit City Stores Inc v Adams 532 U.S. 105 (2001), found to include employment agreements containing an arbitration clause such as the claimant's, is preemptive of RSA 275:51 V. Under this holding of Circuit City Stores Inc v Adams, the Federal Arbitration Act holds that an employment agreement which contains an arbitration clause ot be "valid, irrevocable, and enforceable." This conclusion is bolstered by Barclay Perry and James Johnston v Kenneth Morgan Thomas 482 U.S. 483 (1987), in which the court opined "...under the effect of the Supremacy Clause, the State statute must give way", discussing the preemptive effect of the Federal Arbitration Act.

The claimant is preempted from his right to file this Wage Claim with the New Hampshire Department of Labor pursuant to RSA 275:51 V, and is required to comply with the arbitration clause contained in his employment agreement.

Even if the claimant had not been preempted by the arbitration clause of the employment agreement, he did not prove he met the criteria to be eligible for incentives under the written policy of the employer.

DECISION

As this Department concludes that it does not have jurisdiction under RSA 275:51 V due to the existence of an arbitration clause in the claimant's employment agreement and the preemptive status given the arbitration clause over State statute by the Federal Arbitration Act, it is hereby ruled the Wage Claim is invalid due to a lack of jurisdiction by this Department.

Melissa J. Delorey
Hearing Officer

Date of Decision: December 1, 2015

cc: Kathleen C. Peterson, Esq, Inhouse Counsel, Citizens Bank NA, 100
Sockanosset Cross Rd, Cranston, RI 02920

MJD/mjd