

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Edward Jones
Case No.: 58278

DECISION OF THE HEARING OFFICER

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

Date of Hearing: March 7, 2019

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of her Wage Claim, she was owed \$15,000 in unpaid commissions for five life insurance policies for which she submitted applications and one renewal premium which occurred prior to her separation from employment.

At the hearing she amended her claim to \$11,600, which represents her 40% of the expected commissions, as follows:

- \$800 client KC;
- \$4,000 client SR;
- \$2,800 client GC;
- \$3,600 client PC;
- \$400 client SA; and
- An undisclosed amount for JF.

The employer denies the claimant is due any commissions as the life insurance policies were not completed by the claimant, pursuant to the written policy.

FINDINGS OF FACT

The claimant worked for the employer as a Financial Advisor from January 2004 through October 14, 2018, when she voluntarily resigned. She had been suspended from her position beginning August 24, 2018, and did not return to employment prior to her resignation on October 14, 2018. For all relevant periods to this Wage Claim, she was a licensed insurance agent.

As part of her relevant compensation for this claim, she received 40% of the commission received by Edward Jones for life insurance policies which she initiated, completed, delivered to the customer, and are not returned by the customer during the “free look period”.

KC, SR, GC, PC, SA and JF were all clients of the claimant, whom she brought to the employer.

The claimant met with SR's legal representatives in approximately May 2018 to prepare an application for a new life insurance policy pursuant to a 1035 exchange (IRS regulation).

SR and their legal representatives provided a statement, Plaintiff's Exhibit E, dated January 28, 2019, which states that the application submitted by the claimant did not result in a life insurance policy. A new application has been submitted by another Edward Jones representative, Christopher Stevens, which is currently in the underwriting process. No policy has been issued on the new application as of the date of this hearing.

The claimant submitted applications for SA and spouse JF in August 2018, prior to her suspension. No documentation was submitted to show the application for SA resulted in a life insurance policy. The claimant acknowledged that she knew JF did not move forward with this application for life insurance.

Defendant's Exhibit E shows an application for life insurance submitted for SA by another Financial Advisor within Edward Jones, dated December 15, 2018, which resulted in a delivered life insurance policy dated January 18, 2019.

The claimant sold KC a life insurance policy prior to 2018. The claimant alleges the insured paid an annual premium of \$40,000 in August 2018.

The claimant met with GC and PC around July 2, 2018, to prepare individual applications for new life insurance policies for each of them, pursuant to a 1035 exchange (IRS regulation).

Pursuant to Defendant's Exhibit C, PC's life insurance policy was not issued due to deficiencies in the application process. The claimant was admittedly aware of this through Plaintiff's Exhibits C and F, which contain email exchanges between the claimant and PC discussing the issues with the original life insurance application and no policy was issued.

Defendant's Exhibit C also indicates the application submitted for GC, by the claimant, had been approved and the 1035 exchange funds received by the life insurance carrier, but the delivery requirements had not been met, as of February 28, 2019. Ms. Custer acknowledged that GC received the life insurance policy in February 2019, but did not indicate whether the delivery requirements were submitted back to the agent or insurance carrier.

In October 2018, Christopher Stevens became the agent of record for PC and GC. Nick Dubois is now their agent of record as of March 5, 2019. A new life insurance application needs to be resubmitted for PC as the previous life insurance application was denied by the carrier, Defendant's Exhibit C. Mr. Dubois did not know whether or not Edward Jones had been paid a commission on GC's policy, as it had just been delivered in February 2019.

Edward Jones' written policy on JonesLink, the online intranet of the employer, reads, in relevant part, "Employee Financial Advisor Commissions Policy, updated December 31, 2018, 2:07pm, 2. Continued Employment: You do not earn any commissions for transactions completed after your employment with the Firm ends, unless state law provides otherwise. 3. Completion of Transaction: You only earn commissions and fees for completed transactions. A transaction is complete only after all of the following occur: (1) the transaction settles and all information necessary to complete the transaction has been received by Edward Jones, (2) all securities, funds, and fees from the client or product partner that are associated with the transaction are received by Edward Jones, and (3) the cancellation for the product expires."

The employer admits they do not have the required employee signed notification for this written commission policy as required by RSA 275:49 and Lab 803.03 (a), (c), and (f)(6).

The claimant admits she was aware of the requirements to be met for a life insurance policy to be completed and a commission earned, but claims she looked and could not find, the written commission policy on JonesLink and was not aware the policy stated she forfeited commissions when she separated from employment.

DISCUSSION AND CONCLUSIONS

The claimant alleges pursuant to Bryan K. Galloway v. Chicago-Soft, Ltd. 142 NH 752 she should receive commissions on the life insurance applications that she submitted prior to her separation from employment for SR, GC, PC, SA, and JF, regardless of whether a policy was issued or not, as she brought the clients in and performed all the work to procure and submit the applications. She further argues she is due a commission on the renewal premium for KC which she alleges was paid in August 2018.

She further alleges that she looked for, but could not find, the written commission policy on JonesLink, though she was aware of the requirements of a completed transaction for a life insurance policy.

The employer argues pursuant to their written policy, no commissions are paid after separation from employment; therefore, nothing further is due to the claimant.

The claimant's argument that she was unaware of the written policy is not persuasive or credible. The financial and insurance industries are highly regulated with a myriad of requirements on both the employer and agents/brokers of record. A financial advisor of the claimant's experience and sophistication would have no challenge navigating the employer's intranet and it seems unlikely given her knowledge of the commission policy that she had not reviewed the policy at some point during her fourteen years of employment.

The New Hampshire Supreme Court, in Bryan K. Galloway v. Chicago-Soft, Ltd. 142 NH 752, established a "general rule" regarding commission sales that states, "a person employed on a commission basis to solicit sales orders is entitled to his commission when the order is accepted by his employer. The entitlement to commissions is not affected by the fact that payment for those orders may be delayed until after they have been shipped. This general rule may be altered by a written

agreement by the parties or by the conduct of the parties which clearly (*emphasis in original*) demonstrates a different compensation scheme".

The Hearing Officer finds that the claimant was informed of a different compensation scheme through the JonesLink policy which notified her of the requirements for a transaction to be considered settled and commissions are not earned on transactions which are completed after she separates from the Firm.

Because the employer notified the claimant of a different compensation scheme, as allowed by Bryan K. Galloway v. Chicago-Soft, Ltd. 142 NH 752, and none of the life insurance applications resulted in an inforce policy prior to the claimant's separation from employment on October 14, 2018, the Hearing Officer finds the claimant failed to prove she is due any commissions under the written policy of the employer.

The claimant did not provide any proof of KC's \$40,000 premium payment during August 2018, nor any premium payment made at any other time during the claimant's employment. As such, the Hearing Officer finds the claimant did not prove by a preponderance of the evidence she earned and is due commissions for this premium payment.

Even if the employer had not noticed the claimant of the change in compensation scheme, she would not have been entitled to any commissions for these policies.

The life insurance applications the claimant prepared for SR, PC, SA and JF never materialized into inforce life insurance policies. SR and SA eventually did procure life insurance policies through the employer, however, new applications were completed and submitted through a new agent. PC is in the process of applying for life insurance through a new application with a new agent. JF chose not to move forward with a life insurance policy. Therefore, the claimant would not be due any commissions on these policies.

The life insurance policy for GC was issued pursuant to the life insurance application the claimant prepared and submitted. However, as the policy was delivered in February 2019, the employer has not received the commission for this transaction as of the date of this hearing. Pursuant to the written policy, the commission would not yet be due to the agent of record.

The claimant raised the issue of RSA 275:44 IV, liquidated damages, for the first time at the hearing, during her closing statement.

This issue was not noticed for the hearing, nor can issues be added without the consent of all parties pursuant to Lab 204.02. However, in the interest of expediency to all parties, the following information is provided.

RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer, "willfully and without good cause fails to pay" all wages within the timeframe required by statute. The New Hampshire Supreme Court defined "willfully and without good cause" in Ives v. Manchester Subaru, Inc. 126 NH 796 to mean, "voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed". The Court continued, "an employer acts willfully if, having the financial ability to pay wages which he knows he owes, he/she fails to pay them".

The claimant would have the burden to prove by a preponderance of the evidence that the employer voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed, fails to pay them.

The employer credibly provided they believe the claimant is not due the claimed commissions pursuant to their written policy. Because they hold a genuine belief that no commissions are owed to the claimant, no liquidated damages can be awarded under the standard provided in Ives v. Manchester Subaru, Inc. 126 NH 796.

DECISION

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that she is owed the claimed wages/commissions, it is hereby ruled that the Wage Claim is invalid.


Hearing Officer

Date of Decision: March 21, 2019