

BEFORE THE MONTANA DEPARTMENT
OF LABOR AND INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

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IN THE MATTER OF THE WAGE)	Case No. 2113-2018
CLAIM OF STEPHEN E. OLSEN,)	
)	
Claimant,)	
)	ORDER GRANTING
PIERCE’S FLOORING, INC., a Montana)	RESPONDENT’S MOTION FOR
Corporation, a/k/a PIERCE FLOORING)	SUMMARY JUDGMENT
& DESIGN,)	
)	
Respondent.)	
)	

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I. INTRODUCTION

Respondent Pierce’s Flooring, Inc. (Pierce Flooring) filed a Motion for Summary Judgment (the Motion) on the grounds that there were no genuine issues of material fact regarding the commissions claimed by Claimant Stephen E. Olsen (Olsen) and judgment should be entered in favor of Pierce Flooring as a matter of law. The parties were given an opportunity to fully brief the motion. Olsen failed to submit any opposition. In light of no opposition, and for good cause showing, Pierce Flooring’s Motion for Summary Judgment is granted for the reasons stated below.

II. UNDISPUTED FACTS

1. Olsen held a sales position with Pierce Flooring in Bozeman, Montana.

2. As part of his employment with Pierce Flooring, Olsen signed a “Pierce Flooring Employment Agreement” (the Agreement) on September 15, 2014. (SJ Ex. B.)

3. The term of the Agreement ran from September 16, 2014, through September 15, 2015, but was “. . . considered renewed for regular periods of one year provided neither party submits a notice of termination. . . .” (SJ Ex. B at 1.)

4. Subsection 3 of the Agreement provided as follows:

SECTION 3 - COMPENSATION

3.1 Pierce Flooring shall pay Salesperson a commission based upon the gross profit from the sale of all merchandise and products on orders received and accepted by Pierce Flooring under the terms of this Agreement. Such commission is to be determined in accordance with Pierce Flooring's commission schedule in force at the store where Salesperson works at the time of Pierce Flooring's acceptance of the order. *The amount of the commission is to be calculated and determined when the transaction is completed. The transaction is completed after the merchandise or product has been sold, delivered, installed, a bill has been issued and Pierce Flooring has received payment in full from the customer and all expenses related to the sale have been paid.* The commission shall be paid monthly from the balance of the Salesperson's commission account as set forth below. *Pierce Flooring shall not be obligated to credit Salesperson's commission account until the transaction is completed as set forth above.*

3.2 *Commissions shall be credited to Salesperson's commission account when the transaction is complete.* Payment to Salesperson shall be made monthly from the balance of Salesperson's commission account after deduction for federal and state payroll and income taxes and other deductions authorized by law.

3.3 Without obligation to do so, and in its sole option, Pierce Flooring may elect to credit Salesperson's commission account before the transaction is complete. Any such credit in advance of the actual computation of the commission shall be deemed an advance draw on the anticipated commissions. Such advances shall be applied to commissions when they are calculated and determined and Pierce Flooring becomes responsible for payment upon the completion of the transaction. Such advances are subject to repayment on demand at any time before the commission is computed and before Pierce Flooring is responsible for payment.

(SJ Ex. B at 2 (italics emphasis added).)

5. With regard to termination of the employment relationship, the Agreement states in relevant part as follows:

4.2 *If Salesperson's employment is terminated pursuant to this section, Pierce Flooring shall be obligated to pay Salesperson an amount equal to the balance of his or her commission account on the date of termination, less any amount of advances made to Salesperson and less any other deductions authorized by law. Said compensation shall be paid on the next regular payday for the pay period during which the Salesperson was separated from employment. Said compensation shall be paid either through the regular pay channels or by mail, if requested by the Salesperson. After said payments are made, Pierce Flooring shall have no further financial obligation to Salesperson pursuant to this agreement. Regardless of the effective date of termination of Salesperson's employment hereunder, Pierce Flooring may require Salesperson to vacate Pierce Flooring's premises at any time following delivery of written notice of termination hereunder.*

(SJ Ex. B at 2-3 (italics emphasis added).)

6. Olsen resigned from his job with Pierce Flooring on May 23, 2018, with his last day being May 31, 2018.

7. Olsen had 14 orders he generated prior to leaving his employment with Pierce Flooring for which he is now claiming he is owed commissions.

8. Of the 14 orders on which Olsen claims commissions, only one (invoice no. bz013710) was installed prior to Olsen leaving employment. Seven of the 14 orders (invoice nos. bz013577, bz013815, bz013816, bz013930, bz013950, bz013956, and bz013975) had payments made in full to Pierce Flooring prior to Olsen leaving employment. (SJ Ex. C at 1-2.)

9. None of the 14 orders on which Olsen claims commissions had both installation and payments to Pierce Flooring made prior to Olsen leaving employment. (SJ Ex. C at 1-2.)

10. Olsen has not disputed any of the facts set forth in the Motion or the exhibits attached thereto.

11. Olsen was not available for the mandatory final pre-hearing conference scheduled for 9:00 a.m., MST, on January 29, 2020.

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III. DISCUSSION

A. Standards for Summary Judgment

Summary judgment is an appropriate method of dispute resolution in administrative proceedings where the requisites for summary judgment otherwise exist. *Matter of Peila*, 249 Mont. 272, 280-81, 815 P.2d 139, 144-45 (1991). “The judgment sought should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” Rule 56(c), Mont. R. Civ. P.

The moving party “must show a complete absence of any genuine issue as to all facts shown to be material in light of the substantive principle that entitles that party to a judgment as a matter of law.” *Bonilla v. University of Montana*, 2005 MT 183, ¶ 11, 328 Mont. 41, 116 P.3d 823. A “material” fact is one capable of affecting the substantive outcome of the litigation. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). “Material issues of fact are identified by looking to the substantive law which governs the claim.” *Glacier Tennis Club at the Summit v. Treweek Constr. Co.*, 2004 MT 70, ¶ 21, 320 Mont. 351, 87 P.3d 431 (overruled in part on other grounds by *Johnson v. Costco Wholesale*, 2007 MT 43, ¶ 21, 336 Mont. 105, 152 P.3d 727; quoting *Babcock Place P’ship v. Berg, Lilly, Andriolo & Tollefsen, P.C.*, 2003 MT 111, ¶ 15, 315 Mont. 364, 69 P.3d 1145); see also *Anderson*, 477 U.S. 242 at 248; *Bonilla*, ¶¶ 11, 14. A dispute is “genuine” if there is enough evidence for a reasonable trier of fact to return a verdict for the non-movant. See *Scott v. Harris*, 550 U.S. 372, 380 (2007). The inquiry is, essentially, “. . . whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Anderson*, 477 U.S. at 251-52.

“The party opposing summary judgment must come forward with evidence of a substantial nature; mere denial, speculation, or conclusory statements are not sufficient.” *McGinnis v. Hand*, 1999 MT 9, ¶ 18, 293 Mont. 72, 972 P.2d 1126 (citing *Klock v. Town of Cascade*, 284 Mont. 167, 174, 943 P.2d 1262 (1997)). A tribunal reviews the evidence in the light most favorable to the non-moving party, drawing all reasonable inferences in that party’s favor and without making findings of fact, weighing the evidence, choosing one disputed fact over another, or assessing the credibility of witnesses. *Fasch v. M.K. Weeden Const., Inc.*, 2011 MT 258, ¶¶ 16-17, 362 Mont. 256, 262 P.3d 1117.

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B. There Are No Genuine Issues of Material Fact and Pierce Flooring is Entitled to Summary Judgment as a Matter of Law.

This entire case rests on application of portions of sections 3 and 4 of the Agreement. The Agreement states in relevant part in sections 3 and 4 as follows:

- The amount of the commission is to be calculated and determined when the transaction is completed. (Agreement, ¶ 3.1.)
- The transaction is completed after the merchandise or product has been sold, delivered, installed, a bill has been issued and Pierce Flooring has received payment in full from the customer and all expenses related to the sale have been paid. (Agreement, ¶ 3.1.)
- Pierce Flooring shall not be obligated to credit Salesperson's commission account until the transaction is completed as set forth above. (Agreement, ¶ 3.1.)
- Commissions shall be credited to Salesperson's commission account when the transaction is complete. (Agreement, ¶ 3.2.)
- If Salesperson's employment is terminated pursuant to this section, Pierce Flooring shall be obligated to pay Salesperson an amount equal to the balance of his or her commission account on the date of termination, less any amount of advances made to Salesperson and less any other deductions authorized by law. (Agreement, ¶ 4.2.)
- After said payments are made, Pierce Flooring shall have no further financial obligation to Salesperson pursuant to this agreement. (Agreement, ¶ 4.2.)

(SJ Ex. B at 1-2 (emphasis added).) It is Olsen's contention that he is due commissions on 14 orders which were placed prior to when he left.

Here, the Agreement is a contract Olsen entered into with Pierce Flooring, and the Hearing Officer finds no ambiguities in its language. As such, the Agreement must be applied as written:

The construction and interpretation of a written contract is a question of law. Where a contract has been reduced to writing, the intention of the parties is to be ascertained, if possible, from the writing alone. Thus, where a contract's terms are clear and unambiguous, a court must apply the language as written.

Wurl v. Polson Sch. Dist. No. 23, 2006 MT 8, ¶ 16, 330 Mont. 282, 288, 127 P.3d 436 (internal citations omitted); *see also* Mont Code Ann. § 28-3-303.

It is undisputed that, at the time Olsen left his employment with Pierce Flooring, he had made 14 sales for which he had not yet received commissions. It is also undisputed, however, that the language of the Agreement controls when those commissions were due Olsen. Under the agreement, Pierce Flooring was not obligated to credit Olsen's commission account until the transactions were "completed." (Agreement, ¶¶ 3.1, 3.2.) Transactions were not "completed" until after the merchandise or product had been sold, delivered, installed, a bill had been issued and Pierce Flooring had received payment in full from the customer and all expenses related to the sale had been paid. (Agreement, ¶ 3.1.) When Olsen's employment ended, pursuant to the terms of the Agreement, Pierce Flooring was only obligated to pay Olsen the balance of his commission account on the date of termination. (Agreement, ¶ 4.2.) After making that payment, Pierce Flooring had no further financial obligation to pay commissions. (Agreement, ¶ 4.2.)

Of the 14 orders on which Olsen claims he is owed commissions, none were both paid for and installed prior to his last date of work. For the sales to have been "completed" and credited to Olsen's commission account, both of those things would have needed to have happened. Pursuant to the terms of the Agreement, because none of the 14 orders were "completed" when Olsen's employment ended, Olsen's commission account was not yet credited with the sales and Pierce Flooring was not obligated to pay the associated commissions. This outcome would be the case under the agreement even if Olsen's departure was not voluntary. (Agreement, ¶ 4.1.)

In light of the foregoing, it is clear from the undisputed facts that Olsen is not due any commissions on the 14 orders in dispute. The terms of the Agreement are clear and unambiguous. Regardless of whether he originated the orders, Olsen left before the sales were completed, his commission account was therefore not yet credited, and Pierce therefore had no obligation to pay those commissions. Pierce Flooring is therefore entitled to summary judgment as a matter of law.

IV. CONCLUSIONS OF LAW¹

1. The State of Montana and the Commissioner of the Department of Labor and Industry have jurisdiction over this complaint under Mont. Code Ann. § 39-3-201 *et seq.* *State v. Holman Aviation*, 176 Mont. 31, 575 P.2d 925 (1978).

2. When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible. Mont. Code Ann. § 28-3-303.

¹Statements of fact in the conclusions of law are incorporated by reference to supplement the findings of fact. *Coffman v. Niece*, 110 Mont. 541, 105 P.2d 661 (1940).

3. The Agreement is clear and unambiguous. *Wurl*, ¶ 16.

4. There is no genuine issue as to any material fact with regard to whether any of the 14 orders were completed prior to Olsen's departure from employment with Pierce Flooring, and thus no genuine issue of material fact as to whether Olsen should be paid commissions on those sales.

5. Pierce Flooring is entitled to judgment as a matter of law with regard to Olsen's claims.

V. ORDER

IT IS THEREFORE ORDERED THAT:

1. Pierce Flooring's Motion for Summary Judgment is GRANTED as to Olsen's claims.

2. Olsen's appeal is DISMISSED.

3. Because of the dismissal, the hearing date and all other dates and deadlines set forth in the Scheduling Order are hereby VACATED as moot.

DATED this 29th day of January, 2020.

DEPARTMENT OF LABOR & INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ CHAD R. VANISKO
CHAD R. VANISKO
Hearing Officer

NOTICE: You are entitled to judicial review of this final agency decision in accordance with Mont. Code Ann. § 39-3-216(4), by filing a petition for judicial review in an appropriate district court within 30 days of the date of mailing of the hearing officer's decision. See also Mont. Code Ann. § 2-4-702. Please send a copy of your filing with the district court to:

Department of Labor & Industry
Wage & Hour Unit
P.O. Box 201503
Helena, MT 59620-1503