PALEY ROTHMAN
ATTORNEYS AT LAW

When Are Commissions Earned In Maryland?

By former Associate Ethan Don

Under the Maryland Wage Payment and Collection Law, employers must pay employees “all wages due for work that the employee performed before termination of employment, on or before the day on which the employee would have been paid the wages if the employment had not been terminated.” “Wages” include commissions, and the law has been applied to require payments to former employees who have done everything required of them to earn the commission before termination of employment.

In an ongoing case in the United States District Court for the District of Maryland, Wells Fargo Bank, N.A. (Wells Fargo), is challenging how courts apply the law. Wells Fargo moved to dismiss a former mortgage banker’s suit for breach of contract and unpaid commissions. The suit centers on Wells Fargo’s commission compensation plan which required mortgage bankers to be employed with Wells Fargo at the time the commission is due to be paid, or at least through closing of the loan on which the commission was earned. Wells Fargo argued that its requirement of continued employment through at least the loan closing “merely recognizes ‘the ongoing job responsibilities with respect to the closing of loans on which the Employee may be eligible to receive commissions/incentives’” and that because employment ended before the loans closed, the former employee could not satisfy his job responsibilities related to the closings.

The District Court rejected this argument, at least for purposes of a Motion to Dismiss. The former employee plead that he had satisfied his job duties, the commission compensation plan did not set forth any specific responsibilities, and Wells Fargo could not show at the Motion to Dismiss stage what the responsibilities were that the former employee failed to complete. As such, Wells Fargo’s Motion to Dismiss was denied.

It remains to be seen how this case will ultimately be decided. But, what is clear already, is that employers with commission or other incentive compensation plans need to consider the specific responsibilities that must be performed in order for the commission/incentive to be earned. Without a recognition of an employee’s responsibilities necessary to earn the commission/incentive, there could be expensive and somewhat unpredictable litigation.

 | 4800 Hampden Lane, 6th Floor, Bethesda, MD 20814-2930 | 301-656-7603 | 301-654-7354 fax www.paleyrothman.com