

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: Hon. Joan B. Carey
Administrative Order

KATHERINE HILL,

Plaintiff,

- v -

INDEX NO. 602331/2009

EUROPEAN INVESTORS, INC. a/k/a
EII REALTY SECURITIES INCORPORATED a/k/a
EUROPEAN INVESTORS CORPORATE
FINANCE, INC. a/k/a EII REALTY CORP.,

Defendant.

Administrative Order:

By letter dated October 5, 2009, counsel for plaintiff Katherine Hill applies for the transfer of this action from I.A.S. Part 44 (Tingling, J.) to the Commercial Division pursuant to Uniform Rule 202.70. Counsel for defendant opposes the application by letter dated October 13, 2009.

Uniform Rule 202.70 (b) (1) provides that actions in which the principal claims involve or consist of breach of contract where the breach or violation is alleged to arise out of business dealings will be heard in the Commercial Division provided the \$150,000 monetary threshold for New York County is met or equitable or declaratory relief is sought. Specifically included are actions concerning employment agreements, unless the claims principally involve alleged discriminatory practices. The \$150,000 monetary threshold is exclusive of punitive damages, interest, costs, disbursements and counsel fees.

Plaintiff's counsel contends that the action meets the standards for assignment to the Commercial Division, because the complaint alleges that defendant, plaintiff's former employer, breached a contract to pay sales commissions that plaintiff earned prior to leaving defendant's employ, and plaintiff is seeking \$308,000 in unpaid commissions, exclusive of punitive/liquidated damages, interest, costs and attorneys' fees.

Defendant argues that the "principal claim" of plaintiff's complaint does not involve a breach of contract and does not arise out of business dealings; rather, it is a claim for the violation of the unpaid wage provisions of the Labor Law, by which plaintiff

seeks liquidated damages and attorneys' fees. Defendant maintains that this is not a lawsuit concerning the breach of an employment agreement, within the meaning of Uniform Rule 202.70 (b) (1), because plaintiff was, at all times, an employee at will.

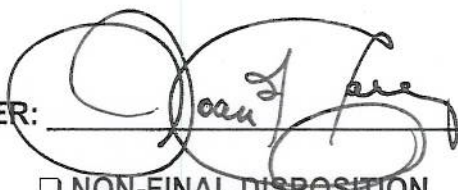
The plaintiff's request for a transfer to the Commercial Division is granted. A request to transfer a case into the Commercial Division is based on the allegations of the complaint and counsel's written statement in support; it is not a forum for litigating the merits of a dispute. Although plaintiff's employment was "at will," the terms of her compensation are outlined in two letters, which may or may not justify the payment of the commissions sought. Since counsel for the plaintiff has represented that the amount of commissions sought is \$308,000, the case meets the requirements for assignment to the Commercial Division.

Although plaintiff's counsel sent his request to the court by hand on October 5th, but only mailed a copy to his adversary, this was noted plainly on his October 5th letter, unlike the situation in Madison Rest. Acquisition Corp. v The Volney Residences, Inc., Index No. 600783/08), and defense counsel was given a generous amount of time to frame a response.

Accordingly, the Motion Support Office is directed to reassign this case at random to a Justice of the Commercial Division. (A motion to dismiss the complaint is currently returnable on October 29, 2009 in the Motion Submissions Part.)

Dated: October 19, 2009

ENTER:

 A.J.

Check one: ☐ FINAL DISPOSITION

☐ NON-FINAL DISPOSITION