Knight v United Pharm. Network
2017 NY Slip Op 33117(U)
April 27, 2017
Supreme Court, Saratoga County
Docket Number: 20163115
Judge: Thomas D. Nolan

[* 1]

ORIGINAL

STATE OF NEW YORK

SUPREME COURT COUNTY OF SARATOGA

THOMAS J. KNIGHT a/k/a TIM KNIGHT,

Plaintiff,

-against-

UNITED PHARMACY NETWORK a/k/a PHARMACY PLUS NETWORK,

Defendant.

DECISION AND ORDER
RJI No. 45-1-2017-0159
Index No. 20163115

FILED
2017 MAY -4 AM 10:46

PRESENT: **HON. THOMAS D. NOLAN, JR.**
Supreme Court Justice

APPEARANCES: COOPER, ERVING & SAVAGE, LLP
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In January 2016, plaintiff, with more than 40 years in pharmaceutical sales, accepted a position as a regional sales director for defendant, and the terms of his engagement were included in an "offer letter" signed by plaintiff and defendant's chief executive. As now relevant, the agreement provided plaintiff would receive a base annual salary of $80,000.00 and a "draw" of $40,000.00 annually against future commissions plus a $200.00 bonus for every new pharmacy account plaintiff secured.

In March 2016, plaintiff alleges defendant first provided to him an employee manual, which, in at least two places, included statements that "the policies and procedures in this manual

are not intended to be contractual commitments by [defendant] and employees shall not construe them as such" but were "intended to be guides to management and merely descriptive of suggested procedures to be followed".[1] One section of the manual entitled, "Employee Disputes" provided as follows:

> Any dispute or claim that arises out of or that relates to employment with [defendant] or that arises out of or that is based on the employment relationship (including any wage claim, any claim for wrongful termination or any claim based on any employment discrimination or civil rights statute, regulation or law), including tort or harassment claims (except a tort that is a "compensable injury" under workers' compensation law), shall be resolved by arbitration in accordance with the then effective commercial arbitration rules of the American Arbitration Association by filing a claim in accordance with the Association's filing rules, and judgment on the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof.

In March 2016, plaintiff signed an acknowledgment form including language that "[plaintiff] understand[s] that this handbook is neither a contract of employment nor a legally binding agreement" and that "[plaintiff] accept[s] the terms of the handbook" and "that it is [plaintiff's] responsibility to comply with the policies contained in this handbook...".

In May 2016, plaintiff's supervisor notified plaintiff that "due to the minimal new business in the time of your employment and new business goals set forth by [defendant], we must remove your draw of $40,000.00". Defendant's notice continued that "if you do wish to continue with your base salary of $80,000.00...,please let me know". Plaintiff subsequently resigned.

In this action commenced in November 2016, plaintiff contends that he was induced by

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[1]Defendant asserts that plaintiff received the employee manual in January 2016 when he was hired.

defendant's false promises to leave his former employment and to join defendant for "a guaranteed first year of employment". His complaint sets forth causes of action seeking damages for fraudulent inducement, breach of employment contract, and promissory estoppel.

Now, relying on the employee handbook provision, defendant, pre-answer, moves pursuant to CPLR 7503 (a) for an order staying the action and compelling arbitration of the parties' disputes. In opposition, plaintiff urges that the "offer letter" establishes the terms governing the parties' employment agreement and that the disclaimer language included in the handbook did not alter those terms. In a word, plaintiff contends that the arbitration provision is not binding on him.

The dispositive question now raised and which is before the court is whether the parties agreed to arbitrate disputes arising from the employment relationship by plaintiff's signing of the acknowledgment form. Clearly, New York favors arbitration as a method of resolving disputes as a matter of public policy. Stark v Molod, Spitz, DeSantis & Stark, P.C., 9 NY3d 59, 66 (2007). Defendant has the burden to show that a "clear, explicit and unequivocal agreement" to arbitrate exists (citation omitted)". Matter of Fiveco, Inc. v Haber, 11 NY3d 140, 144 (2008). In New York, "routinely issued employee manuals, handbooks and policy statements should not lightly be converted into binding employment agreements". Lobosco v New York Telephone Co., 96 NY2d 312, 317 (2001). In Lobosco, a long term employee was presented with a manual which included disclaimers similar to those in defendant's handbook. An at-will employee was terminated and attempted to rely on a provision in the manual which allegedly limited the employer's grounds to terminate him. Based on the explicit disclaimer, the court ruled that the manual did not create an express or implied contractual obligation which modified the

employer's ability to terminate an at-will employee. The court held that "such disclaimer prevents the creation of a contract and negates any protection from termination plaintiff may have inferred from the manual's no reprisal provision". Here, the "letter offer" includes no reference that plaintiff's employment was to be governed by additional terms in an employee handbook. More recently, in Martin v Southern Container Corp., 92 AD3d 647 (2nd Dept 2012), the court held that a discharged employee was not entitled to pay for unused vacation as provided in an employee handbook based on "the conspicuous inclusion [in the handbook] of language disclaiming any intent to create a binding contract...[and] provides no basis for the imposition of an implied contractual obligation upon the defendants to pay the plaintiff for his unused vacation pay". The acknowledgment form plaintiff signed, concededly prepared by defendant, includes conflicting statements - one consistent with the handbook's preamble that "neither a contract of employment nor a legally binding agreement was intended to be created by defendant" and two others wherein defendant "accept[ed] the terms of the handbook" and agreed "to comply with the [handbook's] policies...". The conflicting provisions must, of course, to be construed against the interest of the drafter.

In short, the record fails to establish that a clear, explicit, and binding agreement to arbitrate was made a part of the parties' employment agreement based on the contents of the handbook.

Defendant's motion is denied, without costs.

This constitutes the decision and order of the court. The original decision and order is returned to counsel for plaintiff. All original motion papers are delivered to the Supreme Court Clerk/County Clerk for filing. Counsel for plaintiff is not relieved from the applicable provisions

of CPLR 2220 relating to filing, entry, and notice of entry of the decision and order.

So Ordered.

DATED: April 27, 2017
Saratoga Springs, New York

HON. THOMAS D. NOLAN, JR.
Supreme Court Justice

ENTERED
Craig A. Hayner
Saratoga County Clerk

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