Claim No. SCT 292/2020 THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS In the name of His Highness Sheikh Mohammed Bin Rashid Al Maktoum, Ruler of Dubai IN THE SMALL CLAIMS TRIBUNAL OF DIFC COURTSBEFORE SCT JUDGE NASSIR AL NASSER BETWEEN LAYTON Claimant and LEIGHTON Defendant Hearing : 21 September 2020 Judgment : 28 September 2020 JUDGMENT

Claim No. SCT 292/2020

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

In the name of His Highness Sheikh Mohammed Bin Rashid Al Maktoum, Ruler of Dubai

IN THE SMALL CLAIMS TRIBUNAL OF DIFC COURTS
BEFORE SCT JUDGE NASSIR AL NASSER

BETWEEN

LAYTON

Claimant

and

LEIGHTON

Defendant

Hearing : **21 September 2020**
Judgment : **28 September 2020**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON the Claim Form being filed on 24 August 2020

AND UPON a Hearing having been held before SCT Judge Nassir Al Nasser on 21 September 2020, with the Claimant and the Defendant's representative in attendance

AND UPON reading the submissions and evidence filed and recorded on the Court file;

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant the outstanding sum of the Revenue Share Incentive in the sum of USD 121,925.86.

2. The Defendant shall pay the Claimant penalties under Article 19 of the DIFC Employment Law in the sum of USD 13,687.43.

3. The Defendant shall pay the Claimant the Court fees in the sum of USD 2,712.27

Issued by:
Nassir Al Nasser
SCT Judge
Date of issue: 28 September 2020
At: 9am

THE REASONS

The Parties

1. The Claimant is **LAYTON** an individual filing a claim against the Defendant regarding his employment at the Defendant company (the "Claimant").

2. The Defendant is **LEIGHTON**, a company registered and located in the DIFC, Dubai (the "Defendant").

The Preceding History

3. The underlying dispute arises over the employment of the Claimant by the Defendant pursuant to an employment contract dated 1 December 2015 (the "Employment Contract") with a commencement date of 14 December 2015.

4. On 4 June 2020, the Claimant was terminated by the Defendant by way of a termination letter, and his last working day was on 4 July 2020.

5. On 24 August 2020, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") claiming the payment of the Revenue Share Incentive for 2019 in the sum of USD 121,925.86.

6. On 31 August 2020, the Defendant responded to the claim by filing a defence.

7. The parties met for a Consultation with SCT Judge Delvin Sumo on 6 September 2020 but were unable to reach a settlement.

8. Thereafter, the parties attended a hearing listed before me on 21 September 2020.

Claimant's submission

9. The Claimant filed a claim with the SCT alleging that he is entitled to a Revenue Share Incentive for the 2019 year in the sum of USD 219,437.57, of which the Defendant only paid the sum of USD 97,511.71. Accordingly, the Claimant alleges that he remains entitled to the sum of USD 121,925.86.

10. In addition, the Claimant alleges that he is entitled to penalties under Article 19 of the DIFC Employment Law No. 2 of 2019, as amended (the "DIFC Employment Law") equal to his daily wage for each day the Defendant has been in arrears; i.e. USD 13,687.43.

11. Clause 4.2.1 of the Employment Contract reads as follows:

"In addition to the basic salary and in consideration for the Employee working for the Employer and observing and performing his duties, covenants and obligations herein contained, the Employee is entitled to a bonus as per schedule 2 of this Contract."

12. Paragraph 2 of Schedule 2 of the Employment Contract stipulates the following:

> "2) for the annual remuneration plan, the formula will be as follows:
>
> Net revenue generated on clients bought LAYTON - salaries, direct expenses and allowances of LAYTON (including but not limited to X&X costs of assistance, etc.) ◆=
>
> 15% of pay-out pool will subsequently be attributed to LAYTON and paid out up to two months after at the end of each civil year (no later than 28 February)".

13. The Claimant was promoted to the position of Senior Relationship Manager (the "Promotion") by way of a promotion letter dated 14 January 2017, which the parties confirm was wrongfully dated, meaning that the Promotion only commenced on 14 January 2018. As part of the Promotion, the Salary and the Revenue share incentive multipliers were increased. The promotion letter signed by the CEO, LACHLAN, reads as follows:

> "it is with great pleasure that the Board of Directors has decided to promote you with immediate effect to Senior Relationship Manager with a salary increase from AED 25,000 to AED 37,000 per month.
>
> Furthermore, your revenue pay-out has been increased from 15% to:
>
> 20% on Net Revenue below USD 500,000
>
> 25% on Net Revenue above USD 500,000
>
> 30% on Net Revenue above USD 1,000,000".

14. The Claimant alleges that for the 2019 calendar year, he had generated a total revenue of USD 1,374,087.24. The Claimant submits that in order to calculate his revenue share incentive, the following amounts must be subtracted from the total net revenue generated, set out below:

(a) Revenue generated with other relationship managers:

(i) Nine accounts managed with LACHLAN.

(ii) The total net revenue generated on these accounts in 2019 was USD 363,964.68 LACHLAN is entitled to 50% of the total revenue generated on these nine accounts (i.e. USD 181,982.34).

(iii) Accordingly, after subtracting USD 181,982.34 earned by LACHLAN on the aforementioned nine accounts, the remaining total revenue that the Claimant generated in 2019 is USD 1,192,104.9.

(b) Draw Salaries:

(i) A total of USD 88,481.82 must be deducted from the remaining total net revenue to account for 2015 and 2016 draw salaries.

(ii) A total of USD 120,859.20 must also be deducted from the remaining total net revenue to account for the 2019 draw salary.

(iii) Accordingly, after subtracting 2015, 2016 and 2019 draw salaries (i.e. a total of USD 209,341.02) the remaining total net revenue that the Claimant generated is USD 982,763.88.

(c) Expenses:

(i) The Claimant's total expenses for 2019 calendar year was USD 5,013.61.

(ii) Accordingly, after subtracting the 2019 expenses, the remaining total net revenue the Claimant generated is USD 977,750.27.

15. The Claimant alleges that in accordance with the revenue share incentive multipliers (as set out in the promotion letter), his revenue share

incentive is calculated as follows:

(a) 20% on Net revenue below USD 500,000: USD 500,000 x 20% = USD 100,000

(b) 25% on Net revenue above USD 500,000: USD 477,750.27 x 25% = USD 119,437.57

(c) 30% on Net revenue above USD 1,000,000: Not available

16. Therefore, the Claimant alleges that for the 2019 calendar year, he is entitled to a revenue share incentive of USD 219,437.57, which is to be offset against the Defendant's payment of USD 97,511.71, leaving the amount of USD 121,925.86 allegedly outstanding. As set out above, the Claimant also seeks penalties for the Defendant's non-payment of this entitlement in accordance with Article 19 of the DIFC Employment which provides that:

"an Employer shall pay an Employee, within fourteen (14) days after the termination date:

(a) all remunerations .".

17. The Claimant alleges that the amount of USD 121,925.86 for his 2019 revenue share incentive should have been paid at the time of his termination, or 14 days after his termination date. The Claimant submits that payment has not been made to him in that regard and has since exceeded the 14-day grace period set out in Article 19 of the DIFC Employment Law. The Claimant therefore submits that he is entitled to a penalty equal to his daily wage for each day the Defendant is in arrears of its payment obligations towards him, in respect of his entitlement.

18. The Claimant calculated the total penalty owed to him by the Defendant as the follows:

(a) Monthly salary: AED 45,000

(b) Daily wage: AED 45,000 x 12/365 days = AED 1,479.45.

(c) Number of Days the Defendant is in arrears: 34 days

(d) Total penalty amount: AED 1,479.45 x 34 days = AED 50,301.30 (i.e. USD 13,687.43).

The Defendant's submissions

19. The Defendant denies the Claimant's allegations and his claims for outstanding payments in respect of his revenue share incentive and penalties under Article 19 of the DIFC Employment Law.

20. The Defendant alleges that the Claimant was employed as a Relationship Manager in the capacity of Vice President. Furthermore, the Defendant adds that the Claimant was not promoted to Senior Relationship Manager, alleging that the Board of Directors did not approve the Promotion, and that the Board had not seen the Promotion letter before being served with this Claim.

21. The Defendant alleges that LACHLAN does not have the Authority to promote and recruit employees without the Board's approval, and therefore did not have the authority to sign the Promotion Letter.

22. The Defendant also alleges that the Claimant was not promoted to Managing Director as per the promotion letter dated 14 January 2020, which the Defendant submits was signed by LACHLAN without the Board's approval.

23. The Defendant alleges that the Claimant was only entitled to the amounts under Revenue share incentive in the sum of USD 97,511.71 for the year 2019, which was calculated pursuant to his Employment Contract, and paid to him accordingly.

24. The Defendant also alleges that the Claimant is not entitled to any additional Revenue share incentive and that the Defendant has complied with its obligation pursuant to Article 19 of the DIFC Employment Law in full.

25. The Defendant adds that the Claimant is only entitled to a bonus in respect of clients that were properly signed in compliance with the Employment Contract.

26. By Schedule 1 to his Employment Contract, the Claimant was required to "liaise with the Compliance Officer regarding establishment of new accounts/new clients and ensuring all account opening procedures and internal guidelines are strictly followed". The Defendant alleges that the Claimant failed to do so in respect of the problematic clients, and as a result, no bonus is payable to the Claimant, in the Defendant's submission.

Discussion

27. This dispute is governed by DIFC Law No. 2 of 2019, as amended (the "DIFC Employment Law") in conjunction with the relevant Employment Contract.

28. The main issues to be considered are (i) whether the Claimant was promoted to receive a higher multiplier on the Revenue Share Incentive; and (ii) whether the Claimant is entitled to the amounts relating to the Revenue Share Incentive in relation to Problematic Clients.

29. The Defendant argues that the Claimant failed to liaise with the compliance officer regarding the establishment of new accounts/clients, which, the Defendant submits, is considered as breach of the Employment Contract. The Defendant argues that the Claimant on-boarded Problematic Clients, therefore, he is not entitled to Revenue Share Incentive for such Clients.

30. The Defendant failed to provide any evidence in relation to the Problematic Clients, and has made allegations in regards to their conduct without supporting said allegations with evidence. Therefore, I find that the Claimant is entitled to receive Revenue Share Incentive towards such

clients.

31. The main question now is whether the Claimant was promoted in January 2018 and would hence be entitled to receive a higher multiplier, as demonstrated in paragraph 13 of this Judgment.

32. The Claimant provided a salary letter issued by the Defendant dated 11 March 2019, which provides that the Claimant is a Senior Vice President and his salary is AED 37,000. Along with the salary letter, the Claimant also presented his bank statement which reflects that the Claimant was receiving the sum of AED 37,000 every month.

33. In addition, the Claimant also provided a letter dated 14 January 2020, evidencing a promotion to "Managing Director" and a salary increase from AED 37,000 to AED 45,000. Furthermore, the Claimant provided his bank statement reflecting that he actually received AED 45,000 each month from January 2020 to May 2020.

34. The Defendant's arguments in relation to this once again were not supported by evidence, and the Defendant failed to file any evidence to demonstrate that LACHLAN did not have the authority to promote and recruit without the Board's approval.

35. I find that the evidence provided by the Claimant is sufficient to determine that he is entitled to a Revenue Share Incentive calculated pursuant to the Promotion letter calculation demonstrated in paragraph 13 of this Judgment.

36. In accordance with the revenue share incentive multipliers (as set out in the promotion letter), the Claimant's revenue share incentive is calculated as follows:

(a) 20% on Net revenue below USD 500,000: USD 500,000 x 20% = USD 100,000

(b) 25% on Net revenue above USD 500,000: USD 477,750.27 x 25% = USD 119,437.57

(c) 30% on Net revenue above USD 1,000,000: Not available

37. Therefore, the Claimant is entitled to a revenue share incentive of USD 219,437.57 for 2019. As set out above, this amount is to be offset against the amounts already paid by the Defendant in relation to the revenue share incentive, in the amount of USD 97,115.71. Therefore, the Claimant is entitled to the remaining balance in the sum of USD 121,925.86.

38. In regard to the Claimant's claim for penalties under Article 19 of the DIFC Employment Law, I find that the Defendant's failure to pay this remuneration within 14 days of the Claimant's termination date has triggered the on set of the penalty, to be paid to the Claimant. The amount of days of delay has been set out by the Claimant to be 34 days, for which the Claimant is entitled to receive the sum of USD 13,687.43.

Conclusion

39. In light of the aforementioned, the Defendant shall pay the Claimant the outstanding sum of the Revenue Share Incentive in the sum of USD 121,925.86.

40. The Defendant shall pay the Claimant penalties under Article 19 of the DIFC Employment Law in the sum of USD 13,687.43.

41. The Defendant shall pay the Claimant the Court fees in the sum of USD 2,712.27

Issued by:
Nassir Al Nasser
SCT Judge
Date of issue: 28 September 2020
At: 9am