THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

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

IN THE SMALL CLAIMS TRIBUNAL OF DIFC COURTS
BEFORE SCT JUDGE MAHA AL MEHAIRI

BETWEEN

MIXAH

Claimant

and

MOLDAN INVESTMENTS LIMITED

Defendant

Hearing : **31 December 2020**
Judgment : **21 January 2021**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON this Claim being filed on 10 November 2020

AND UPON a hearing listed before SCT Judge Maha Al Mehairi on 31 December 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 Claimant's claims are dismissed.

2. Each party shall bear their own costs.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 21 January 2021
At: 9am

THE REASONS

The Parties

1. The Claimant is Mixah (the "Claimant"), an individual formerly employed as a broker at Moldan Investment Limited (the "Defendant").

2. The Defendant is a brokerage company located within the Dubai International Financial Centre (the "DIFC")

Background and the Preceding History

3. The underlying dispute arises over the employment of the Claimant by the Defendant pursuant to an Employment Contract dated 1 March 2020 (the "Employment Contract"). The Claimant was hired as a Quantitative Trader for a monthly salary of AED 30,000.

4. On 6 July 2020, the Claimant handed in his resignation from the Defendant company by way of email.

5. On 10 November 2020, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT"), claiming his biannual performance commission fee in the amount of USD 59,558.

6. The Defendant's position is that the Claimant should have served his contractual one-month notice period, given an adequate handover of his workload, and returned the Defendant's property.

7. On 16 December 2020, the parties met for a Consultation with SCT Judge Delvin Sumo but were unable to reach a settlement. In line with the rules and procedures of the SCT, this matter was referred to me for determination and a hearing was listed for 31 December 2020.

The Claim

8. The Claimant's case is that he was employed with the Defendant as a Quantitative trader, from 1 March 2020 until 6 July 2020. As provided above, the Claimant resigned on 6 July 2020, and refrained from serving his one month notice period.

9. The Claimant, pursuant to his termination, had sought to agree an amount to be paid to him by the Defendant. The amount proposed by the Claimant was denied by the Defendant and therefore the Claimant proceeded to file his Claim with the SCT. The Claimant's Claims are set out in the Discussion below.

10. The sum claimed by the Claimant as set out in the Claim Form is USD 59,558, in addition to the Court fee.

11. Subsequent to the email through which the Claimant resigned from his employment with the Defendant, the parties engaged in open correspondence surrounding the terms of the Claimant's employment termination. The Defendant requested that the Claimant serve his one month notice period and return company property being office keys, access cards, car park card and DIFC employment card. The Defendant submits that the Claimant also failed to comply with the visa cancellation processes and failed to handover intellectual property belonging to the Defendant within the timeframe requested.

12. The Defendant also argued that the amount claimed by the Claimant amounts to trades that were requested by the Defendant for which the Claimant seeks commission. The Defendant submits that these trades were based on the Defendant's own research and analysis and not the Claimant's work.

13. Furthermore, the Defendant submits that, as per the Employment Contract, the Claimant is eligible to a bi-annual bonus on trades which are based on quantitative trading of futures and future options with the help of statistical algorithms analysis and research. In order for the Claimant to achieve the bi-annual bonus he must reach a target of AED 180,000 bi-annually and also must have worked with the Defendant for 6 months. The Defendant states that the Claimant only generated USD 41,000, and therefore in accordance with the Employment Contract the Claimant would be eligible for a pay-out of 20% on profits which exceed AED 180,000 over a period of 6 months. The Defendant goes on to submit that the Claimant only accumulated AED 150,000 and did not complete 6 months of employment. The Defendant states that for the above reasons, the Claimant would not be eligible to receive a bonus payment.

Discussion

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

15. Both the Claimant and the Defendant have submitted numerous and detailed submissions. I limit my discussion in this judgment to those submissions which are necessary for my determination of the Claimant's claim and in particular his entitlement or otherwise to the remedies he seeks. Needless to say, consideration has been given to each of the Claimant's claims, factual or legal, as has consideration been given to the Defendant's responses thereto.

Performance fee

16. As a preliminary point, it is important to establish that, pursuant to clause 8 of the Employment Contract:

> "8. Remuneration
>
> Your gross fixed monthly compensation is AED 30,000; giving you a gross annual fixed compensation od AED 360,000. The compensation will be structured as followed Monthly Basic Salary is AED 18,000, Monthly Transportation Allowance is AUED 6,000 (sic), Monthly Housing Allowance is AED 6,000.
>
> In addition, you will receive bi-yearly commission payed out one month in lieu of 20% on net profits which you generate from your trading book, after subtraction of the bi-annual target of 180.000k AED on the generated profits. The bi-annual target can be amended subject to changes in the fix salary which might occur, Further, a joining bonus of AED 12,000 will be payed upon commencement date. In consideration of fulfilment of agreed infrastructural set up such as (data feed, strategic platform, API's etc.) needed in order to immediately start test trading"

17. The abovementioned clause is very clear on the eligibility of the bonus. If the Claimant achieves the target of AED 180,000 he receives the 20% commission. The company has one trade account that the Claimant had access to and all the trades are done through that account. To elaborate, the Claimant receives instructions from the owner of the company and Ms. Minali, an employee of the Defendant, to trade upon receiving instruction of which stock to buy or to sell. The Claimant also trades as he generates profit on behalf of the Defendant.

18. For example, the Claimant is requesting commission from one of the trades that generated AED 300,000 based upon Ms. Minali's instruction and as such she claimed commission. In reply, the Claimant argues that even if the instructions for buying came from Ms. Minali, the Claimant explains that receiving directions from Ms. Minali was not the reason for the profit, the reason was knowing when to buy and when to sell and this skill only comes from his 20 years' experience in this field.

19. The Defendant provided a timeframe for the Mithan Brokers account for the Defendant's company which demonstrates all the trades that were conducted for the period that the Claimant was an employee of the Defendant. The Defendant also provided all the Whatsapp messages between the Claimant and Ms. Minali evidencing the trades. These messages show that the Claimant generated a profit less than AED 180,000 which results in the Claimant not being eligible for the bonus. The Claimant failed to provide evidence to prove that he generated profit more than AED 180,000, therefore, this claim is dismissed.

Conclusion

20. In light of the aforesaid, I find that the Claimant's claims must be dismissed, and he is not entitled to recover the fees in respect of the claims.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
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