

April 27, 2015

Former employee adequately pleads claim to prorated bonus

By Michael R. Lied

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In October 2010, Thomas McCleary was hired by Wells Fargo Securities LLC as director of sales. As part of his compensation, he was eligible to participate in the Wells Fargo Securities Group Bonus Plan.

Among the plan's stated purposes was to attract, retain, motivate and reward eligible participants for their efforts and contributions to the achievement of Wells Fargo's annual financial goals, to ensure that participants complied with all rules, laws, regulations and procedures applicable to their job and to reward participants for their achievements.

In order to qualify for a bonus under the plan, participants had to satisfy certain job-related factors, including achievement of corporate and practice group financial goals, satisfactory ratings, compliance with the terms of the plan and execution of a trade secrets agreement.

A participant was required to be employed on the date of the bonus payment, unless his employment was terminated in a qualifying event. A participant terminated due to a qualifying event could still be considered for a prorated award if he performed services in an eligible position for at least three calendar months during the relevant period and met some of his performance objectives.

If the plan administrator was authorized by Wells Fargo management to create a bonus pool, annual awards under the plan were made in the sole discretion of the plan administrator. Those awards could be adjusted or denied for any reason.

In July 2012, McCleary's job was eliminated for reasons unrelated to his performance. At the time of his termination, McCleary was told that his termination did not disqualify him from participation in the plan and, if a 2012 bonus pool was created, he would be included.

Before his termination, McCleary's performance met the legitimate expectations for his position and he met the necessary standards set forth in the plan to qualify for a 2012 bonus. McCleary, however, was not awarded a performance bonus.

McCleary requested an internal company review of the bonus decision. In response, Wells Fargo informed McCleary that although he was eligible under the plan, in deciding whether to award a bonus, Wells Fargo retained "absolute discretion" to determine a bonus award based on a number of factors and ultimately determined that McCleary would not receive a 2012 bonus payment.

McCleary sued, alleging that the plan stated it was legally enforceable and the failure to include him in the bonus pool and pay him a prorated bonus for the 2012 performance year was a breach of the parties' agreement, including the prohibition on unannounced and retroactive amendments as well as the obligation of good faith and fair dealing.

McCleary also alleged that Wells Fargo's failure to pay the bonus violated the Wage Payment and Collection Act and also constituted unjust enrichment due to Wells Fargo's wrongful retention of his bonus compensation.

The circuit court granted Wells Fargo's motion to dismiss with prejudice. The court found that the language of the plan gave Wells Fargo the absolute discretion to determine whether a bonus should be awarded and, if so, the amount.

On appeal, McCleary argued the circuit court erred because Wells Fargo's discretion was restrained by the covenant of good faith and fair dealing, and McCleary sufficiently pleaded that he had a reasonable expectation to be considered for and to receive a bonus.

Where a contract specifically vests one of the parties with broad discretion in performing a term of the contract, the covenant of good faith and fair dealing requires that the discretion be exercised reasonably and with proper motive, not in a manner inconsistent with the reasonable expectations of the parties.

An employer that exercises its contractual discretion in a manner inconsistent with the reasonable expectations of the parties to deprive an employee of reasonably anticipated benefits may have acted in bad faith.

McCleary claimed that Wells Fargo abused its discretion by changing the required length of service during the plan year to six months, rather than the stated three-month service, and that he did not contemplate such a change when he entered the plan. Because the plan provided for employee participation when amending the plan, McCleary did not expect material adverse changes.

McCleary asserted Wells Fargo breached the agreement because it did not exercise its discretion properly and denial of a bonus was either unreasonable or improperly motivated. According to the appeals court, this failure of Wells Fargo, if proven, would establish a breach of agreement, a violation of the Wage Payment and Collection Act and unjust enrichment by Wells Fargo.

As the court of appeals noted, the core issue was whether McCleary pleaded a cause of action, not whether he had proven his claims.

Since McCleary pleaded that he had a reasonable expectation to a bonus, and that Wells Fargo abused its contractual discretion by arbitrarily withholding the bonus in a manner not reasonably anticipated by the parties, McCleary pleaded a valid cause of action sufficient to withstand a Section 2-615 motion to dismiss.

The appeals court also found that McCleary sufficiently pleaded claims for violation of the wage act and unjust enrichment. Claims for violation of the act are akin to breach-of-contract actions.

The circuit court had dismissed McCleary's amended complaint based on its finding that Wells Fargo's "absolute discretion" under the plan defeated McCleary's claims.

However, the appellate court found that McCleary sufficiently pleaded that Wells Fargo abused its discretion by amending the plan, after Wells Fargo terminated his employment, in order to disqualify McCleary's participation in the bonus pool.

Whether Wells Fargo's decision was a reasonable exercise of its discretion was a question of fact and should not have been resolved on a Section 2-615 motion to dismiss.

McCleary v. Wells Fargo Securities LLC, 2015 IL App (1st) 141287-U

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