

IN THE CIRCUIT COURT OF YIG COUNTY
STATE OF MISSOURI

JAN JONES,)
)
Plaintiff,) Case No. 07-CV-0002
)
vs.)
)
YIG COUNTY REGIONAL)
GROWTH ASSOCIATION, INC.)
a Missouri Corporation,)
)
Defendant.)

TRIAL BRIEF OF DEFENDANT
YIG COUNTY REGIONAL GROWTH ASSOCIATION, INC.

I. INTRODUCTION

Plaintiff Jan Jones has brought suit against Defendant Yig County Regional Growth Association, Inc., (“YCGA”) in two counts. Count I alleges breach of contract and concerns Plaintiff’s claim that YCGA agreed in 1997 to pay her a bonus in 1998. YCGA denies that there was any such agreement. Count II alleges that YCGA violated the Family Medical Leave Act (“FMLA”), by allegedly denying her a leave or absence. YCGA denies that it violated the FMLA.

II. ARGUMENT

A. Breach of Contract

In Count I, Plaintiff alleges breach of contract based on alleged oral promise in 1997 by her supervisor, Linda Smith, that Plaintiff would be eligible for an annual bonus in June 1998 in the amount of \$40,000.00. In order to prove that YCGA breach an agreement with Plaintiff to pay her a bonus, Plaintiff must show: (1) the making and existence of a valid contract; (2) a right of plaintiff and the obligation of defendant; (3) a violation of the contract; and (4) resulting damages. Chase Electric Company v. Acme Battery Manufacturing Company, 798 S.W.2d 204,

208 (Mo.App. 1990). Plaintiff will not be able to prove that YCGA agreed to pay Plaintiff an annual bonus in June 1998 for \$40,000.00.

During her employment with YCGA, Plaintiff held the position of advertising sales representative for YCGA's monthly magazine, *Yig!* YCGA expects the believable evidence will show that Linda Smith never made any oral promise on behalf of the YCGA to pay Plaintiff a \$40,000.00 bonus in June 1998.

YCGA expects the evidence to show that Plaintiff's compensation was specifically outlined in a written offer letter that she received and signed on February 1, 1997, when she first became employed by YCGA. That letter set forth Plaintiff's salary and a written commission structure for advertising sales made by Plaintiff. The offer letter also outlined the potential for quarterly bonuses based on sales volume. The bonus Plaintiff claims Ms. Smith promised is over and above salary, commissions, and quarterly bonuses, and is not tied to any performance measures.

In addition, YCGA expects that the evidence will show that Plaintiff's breach of contract claim is an afterthought. Plaintiff never complained in 1998 that she did not receive a bonus to which she was entitled. In fact, Plaintiff never raised the issue with Ms. Smith or anyone at the YCGA until she was demoted for poor sales performance in 2004, some six (6) years later.

B. Family Medical Leave Act

In Count II of her Petition, Plaintiff claims that Defendant violated her rights under FMLA by denying her intermittent leave in connection with care for her father in 2003.. Plaintiff will not be able to establish she is entitled to recover under FMLA.

Under FMLA, eligible employees are entitled to take up to twelve weeks of unpaid leave from work for certain family or medical reasons, including leave necessary due to the employee's

own serious health condition or to care for a spouse, child or parent with a serious health condition. 29 U.S.C. § 2612(a)(1).

YCGA expects the evidence will show that Plaintiff was granted all the time off she requested or needed in order to care for her father in 2003. While the YCGA did not designate Plaintiff's time off as FMLA leave, Plaintiff took off all the time that she needed and requested to care for her father. In addition, Plaintiff continued to receive her salary during all of the time that she took off to care for her father, which is more than the FMLA requires. Accordingly, the evidence will show Plaintiff was not denied leave.

Respectfully submitted,

Kirkwood High School,

By _____
Judy Hunt

ATTORNEYS FOR DEFENDANT
YIG COUNTY REGIONAL
GROWTH ASSOCIATION, INC.

CERTIFICATE OF SERVICE

A copy of the trial brief was served on Joe Jones and Sally Hunter, Attorneys for Plaintiff Jan Jones, by hand-delivery, this ____ day of November, 2007.

Judy Hunt